

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1410

[Docket ID CCC–2019–0006]

RIN 0560–AI41

#### Conservation Reserve Program

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

**ACTION:** Interim rule.

**SUMMARY:** This rule is revising the Commodity Credit Corporation's (CCC) Conservation Reserve Program (CRP) regulations to specify the terms and conditions of CRP and to implement amendments made by the Agriculture Improvement Act of 2018 (2018 Farm Bill). The 2018 Farm Bill authorizes CRP through fiscal year 2023. This rule makes required changes to the eligibility criteria for enrollment in CRP, the benefits available to participants, and the land use and compliance provisions of CRP. In addition, this rule will implement two new pilot programs, the Clean Lakes, Estuaries, and Rivers 30 (CLEAR 30) Pilot Program and the Soil Health and Income Protection Pilot (SHIPPI) Program, as required by the 2018 Farm Bill.

**DATES:**

*Effective:* December 6, 2019.

*Comment Date:* We will consider comments that we receive by February 4, 2020.

**ADDRESSES:** We invite you to submit comments on this rule. In your comment, please specify RIN 0560–AI41 and include the date, volume, and page number of this issue of the **Federal Register**, and the title of the rule. You may submit comments through the:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID CCC–2019–0006. Follow the online instructions for submitting comments.

All comments received will be posted without change and publicly available on [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Virgil Ireland; telephone: (816) 926–6014, email: [virgil.ireland@usda.gov](mailto:virgil.ireland@usda.gov). Persons with disabilities who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:**

**Background**

CRP is authorized by the Food Security Act of 1985 (Pub. L. 99–198), which was amended by the 2018 Farm Bill (Pub. L. 115–334). The purpose of CRP continues to be cost-effectively assisting producers in conserving and improving soil, water, and wildlife resources, restoring wetlands by converting highly erodible and other environmentally-sensitive land generally devoted to the production of agricultural commodities to a long-term vegetative cover, or improving conditions of certain grasslands. CRP participants enroll land under contracts and maintain approved cover, including grasses and trees, or water cover, in exchange for annual rental payments and financial assistance to install certain conservation practices. Enrollment of eligible grassland in CRP results in adoption of sustainable grazing practices. CRP is administered by the Farm Service Agency (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.

There are three major types of CRP signups: General, continuous, and grassland. Each of the three types has specific enrollment provisions, as described below. 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 (Secretary) announces USDA will accept general signup offers for enrollment. Offers from potential CRP 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 using ranking factors designed to reflect the expected environmental benefits and costs. A fact sheet regarding the EBI factors will be provided on a USDA web page. These EBI factors may include, but are not limited to, wildlife habitat, water quality, and reductions in farm erosion benefits. The highly erodible cropland criteria are based on the provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12. EBI may include benefits that last beyond the contract period and factors that include per acre expected costs. In a general signup, the offer process is competitive and not all offers will necessarily rank high enough to be selected for enrollment in CRP.

For practices and land with especially high environmental value, enrollment through continuous signup is usually 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 may include:

- 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.

While land is accepted on a non-competitive basis, the practices available under CRP continuous signup provide environmental benefits that likely would consistently rank high under the EBI, making the land and practice(s) acceptable for enrollment under a general signup.

The 2018 Farm Bill changes the offer process for grassland signups from a continuous basis to an annual enrollment basis with ranking periods occurring subsequent to the announcement of general signup offers.

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

**Definitions**

This rule removes the following definitions in 7 CFR 1410.2 because they are no longer used in the CRP regulations, or are provided in 7 CFR part 718, or are no longer needed because of improved clarity in the provisions throughout this rule: “deputy administrator,” “field,” “landlord,”

“nesting season,” “offeror,” “operator,” “pastureland,” “payment period,” “pollinator,” “rangeland,” “retired or retiring owner or operator,” “state school trust land,” “state water quality priority area,” and “veteran farmer or rancher.”

This rule adds definitions in 7 CFR 1410.2 of “field border,” “grass waterway,” and “prairie strip” because they are relevant to continuous signup enrollment, as provided in the 2018 Farm Bill. It also adds a definition in 7 CFR 1410.2 of “carrying capacity” and “primary nesting season” that apply to the new permissive uses, as provided in the 2018 Farm Bill, and adds a definition of “eligible partner” as provided in the 2018 Farm Bill relevant to the Conservation Reserve Enhancement Program (CREP). Further, it adds a definition of “approved cover” because the term is used throughout the regulation.

This rule revises the definition of “conserving use” to update the years consistent with the updated cropping history years specified by the 2018 Farm Bill. This rule revises the definitions of “filter strip” and “riparian buffer” to improve clarity regarding the required location of the practice in question and provide consistency between the definitions. This rule revises the definition of “violation” to clarify that an inaction by the participant may also be a violation that results in adverse consequences. This rule also revises “annual rental payment” to specify that certain incentive payments are not included in the definition. This rule revises the definition of “considered planted” to not limit prevented planted credit to those cases in which a producer received an insurance indemnity payment for prevented planting. Further, this rule revises other definitions to remove obsolete, erroneous, or duplicative references and citations, or to improve the clarity of the definition.

### General Description

This rule revises the provisions in 7 CFR 1410.3 to change the term “conserving use” to “approved cover” for consistency with the definition of the term “approved cover.” In addition, this rule removes the provisions regarding cost-share assistance from § 1410.3, as they are duplicative of the provisions regarding cost-share payments elsewhere in this rule. This rule also revises the provisions in 7 CFR 1410.3 regarding the requirement that a producer obtain and adhere to a conservation plan that is duplicated elsewhere in the regulation.

### Maximum County Acreage

The 2018 Farm Bill maintains the acreage limitation that not more than 25 percent of the cropland in any county can be enrolled in CRP. However, it changes the description in 7 CFR 1410.4 of land to which the Secretary may provide a waiver of the county acreage limitation by specifically permitting it on land enrolled under a CREP. Further, it increases the percent of the cropland in a county that may be subject to a wetland easement from not more than 10 percent to not more than 15 percent. This rule revises the maximum county acreage provisions in 7 CFR 1410.4 to incorporate the changes made by the 2018 Farm Bill.

### Eligible Persons

This rule revises the provisions in 7 CFR 1410.5 to improve clarity regarding when the 12-month ownership or operatorship applies based on the type of signup under which the offer is submitted.

### Eligible Land

The 2018 Farm Bill changes the cropping history requirement so that cropland must have been planted or considered planted for 4 of the 6 years preceding the date of enactment of the 2018 Farm Bill (December 20, 2018). The 2018 Farm Bill also provides that cropland enrolled in CRP is to be considered planted for purposes of cropping history eligibility.

The 2018 Farm Bill specifies certain CRP conservation practices that will have a positive impact on water quality, including grass waterways, filter strips, contour grass strips, riparian buffers, wetland practices and wetland buffers, bioreactors, and saturated buffers, as practices eligible for enrollment under a continuous basis. The 2018 Farm Bill also adds, as eligibility criteria for enrollment on a continuous basis, a new CRP conservation practice, prairie strip, and land devoted to practices to benefit State and federally identified wellhead protection areas. The 2018 Farm Bill also makes eligible for enrollment land that was enrolled in CRP under a 15-year contract that expired on September 30, 2017, or September 30, 2018, provided there was no opportunity for such land to be re-enrolled previously, and provided that the conservation practice on such land has been maintained.

The 2018 Farm Bill also limits the number of times land subject to a CRP contract that is devoted to hardwood trees, excluding riparian buffers, shelterbelts, and certain forested wetlands, can be reenrolled in CRP to only one re-enrollment.

Further, the 2018 Farm Bill makes eligible for enrollment in CRP certain land that is subject to State resource conserving or environmental protection measures or practices that would otherwise render such land ineligible for enrollment. Such land will be enrolled under a reduced annual rental payment.

This rule revises the eligible land provisions in 7 CFR 1410.6 to incorporate the changes made by the 2018 Farm Bill, to improve clarity, and to make minor technical corrections.

### Duration of Contracts

The 2018 Farm Bill adds two pilot programs (discussed below) that provide for CRP contracts ranging in duration from 3 to 30 years. Accordingly, this rule revises the provisions in 7 CFR 1410.7 to address the various contract durations and improve clarity.

### Conservation Priority Areas

This rule revises the provisions in 7 CFR 1410.8 to remove provisions regarding designations of National conservation priority areas and provisions allowing State FSA Committees to designate conservation priority areas. This rule revises the provisions in 7 CFR 1410.8 include provisions specifying that a State agency may submit proposals for conservation priority areas within guidelines established by CCC consistent with the Food Security Act of 1985, as amended.

### Restoration of Wetlands

This rule revises 7 CFR 1410.10 to remove provisions regarding potential cost-share and incentive payments that are duplicated elsewhere in the regulation.

### Farmable Wetlands Program

This rule revises 7 CFR 1410.11 to include acreage enrollment limitations, provisions regarding incentive payments for farmable wetlands, clarify cropping history requirements, and for consistency with the Food Security Act of 1985, as amended.

### Grasslands Enrollments and Permitted Uses

The 2018 Farm Bill adds provisions identifying criteria for which the Secretary may give priority when evaluating offers to enroll grasslands in CRP, including land under risk of conversion, land of ecological significance, and land enrolled under an expiring CRP contract. This rule revises 7 CFR 1410.31 to include the 2018 Farm Bill’s criteria that may be used in evaluating offers to enroll grasslands into CRP.

In addition, this rule revises the provisions in 7 CFR 1410.13 to include the activities permitted on grasslands enrolled in CRP, and to remove erroneous references to land previously enrolled in the Grasslands Reserve Program.

#### **Obligations of Participant**

The 2018 Farm Bill adds that under the terms and conditions of the CRP contract, participants must agree to carry out proper thinning and other practices on land devoted to trees, excluding windbreaks and shelterbelts, to enhance the conservation benefits and wildlife habitat resources, and to promote forest management. This rule revises 7 CFR 1410.20 to add the obligation to carry out such activities, and to make other minor changes to improve clarity.

#### **Obligations of CCC**

This rule revises the provisions in 7 CFR 1410.21 for clarity and consistency with the Food Security Act of 1985, as amended, by adding that CCC cost sharing must be appropriate and in the public interest.

#### **CRP Conservation Plans**

The 2018 Farm Bill retains the provision that requires participants to undertake management activities on the land as needed throughout the duration of the CRP contract to implement the conservation plan. However, the 2018 Farm Bill prohibits the Secretary from making any cost-sharing payment for management activities. In addition, under the 2018 Farm Bill, in the case where a natural disaster or adverse weather event occurs that has the same effect as the planned management activity consistent with the conservation plan, then a planned management activity is not required. This rule revises 7 CFR 1410.22 to add provisions regarding a natural disaster or adverse weather event having the same effect as a planned management activity and specifying that no cost-share payments will be provided for any management activity. In addition, this rule clarifies that the conservation plan must be approved by NRCS. Further, this rule revises 7 CFR 1410.22 for technical changes for consistency with the Food Security Act of 1985, as amended, and for clarity.

#### **Signup**

The 2018 Farm Bill requires the Secretary to hold a general signup not less often than once each year. The 2018 Farm Bill also changes enrollment of eligible grasslands from a continuous basis to an annual enrollment basis with

ranking periods being subsequent to the announcement of general signup offers. In addition, the 2018 Farm Bill specifies specific land and practices that will be eligible under a CRP continuous signup basis. Further, the 2018 Farm Bill adds two pilot programs (discussed below), one of which has a statutory deadline for enrollment of December 31, 2020. This rule revises 7 CFR 1410.30 to incorporate the relevant changes made by the 2018 Farm Bill.

#### **CRP Contract**

The 2018 Farm Bill amendments add provisions to allow land enrolled in CRP during the last year of the CRP contract to be enrolled in the Environmental Quality Incentives Program (EQIP) or the Conservation Stewardship Program (CSP), and permit the participants to begin establishment of a practice under the EQIP or CSP programs without being in violation of the CRP contract. In addition, the 2018 Farm Bill adds that during the 3 years prior to the end of the CRP contract period, the participant may begin the certification process under the Organic Foods Production Act of 1990 without being in violation of the CRP contract.

This rule revises 7 CFR 1410.32 to incorporate the provisions of the 2018 Farm Bill regarding enrollment of land into EQIP and CSP and beginning the organic certification process. In addition, this rule revises 7 CFR 1410.32 to clarify that the provisions regarding the termination of CRP contracts and the refunding of payments and assessment of liquidated damages resulting from such CRP contract termination are applicable to the termination of a CRP contract in whole or in part. The policy on termination of CRP contracts is not changing with this rule; rather, the amendments clarify that termination on part of the land enrolled is, for the terminated part of the land, treated the same and has the same consequences as termination of the entire contract.

#### **Contract Modifications**

The 2018 Farm Bill amendments change the time period in which a CRP contract may be modified to facilitate the transition of land to a beginning, socially disadvantaged, or veteran farmer or rancher from the final year of the CRP contract to the last 2 years of the CRP contract. These changes are discussed further below under the Transition Incentives Program. This rule revises 7 CFR 1410.33 to incorporate the changes made by the 2018 Farm Bill with regard to needed CRP contract modifications.

In addition, this rule revises 7 CFR 1410.33 to clarify that the provisions

regarding termination of a CRP contract are applicable to termination whether in whole or in part, consistent with the revisions made to this rule in 7 CFR 1410.32. Further, this rule removes the requirement that practice incentive payments must be refunded when land is transferred from CRP into Agricultural Conservation Easement Program (ACEP), because practice incentive payments are considered cost-share payments under the 2018 Farm Bill.

#### **Cost-Share Payments and Levels and Rates for Cost-Share Payments**

The 2018 Farm Bill adds provisions for practice incentive payments for certain land enrolled under continuous signup and under CREP in an amount not to exceed 50 percent of the actual cost of the practice. It also provides that in the case of seed costs for the practice, the cost-share payments are not to exceed 50 percent of the cost of the actual cost of the seed. Further, it amended the Food Security Act of 1985 to provide that in general, cost-share payments to participants, when combined with payments from all other sources, cannot exceed 100 percent of the actual cost of establishing the practice.

This rule revises §§ 1410.40 and 1410.41 for consistency with the 2018 Farm Bill changes regarding cost-share limits and the limitations for practice incentive payments. In addition, this rule revises 7 CFR 1410.40 to remove references to sections that were removed in 2015, and to add provisions regarding refunds of cost-share payments when other federal cost-share assistance is received by the participants for the same land, as required by the Food Security Act of 1985, as amended. It also clarifies that cost-share payments are not subject to the \$50,000 payment limitation in 7 CFR 1410.42. Further, this rule revises 7 CFR 1410.40 to add that the benefits that would be received from the replacement or restoration of the practice must outweigh the cost of such action in order for cost-share payments to be authorized. This rule also revises 7 CFR 1410.41 to remove provisions that are duplicated in 7 CFR 1410.40.

#### **Annual Rental Payments**

The 2018 Farm Bill amendments provide an exception to the \$50,000 payment limitation in the case where the participant is a rural water district or association and the land enrolled is for the purpose of protecting a wellhead. This rule revises 7 CFR 1410.42 to incorporate the 2018 Farm Bill changes regarding the exception to the \$50,000 payment limitation. In addition, this

rule revises the provisions to improve clarity and consistency with other sections of the regulation.

#### Method of Payment

This rule removes 7 CFR 1410.43 as method of payment provisions are provided in 7 CFR part 1401.

#### Average Adjusted Gross Income

The 2018 Farm Bill amendments provide authority for the Secretary to waive the income limitations that apply to CRP on a case-by-case basis if the Secretary determines that environmentally sensitive land of special significance would be protected as a result of the waiver. The income limitations and provisions for any applicable waiver are implemented in 7 CFR part 1400. This rule revises 7 CFR 1410.44 to add a reference to 7 CFR part 1400 regarding any waiver of the income limitations that may apply to CRP.

#### Incentive Payments

This rule revises 7 CFR part 1410 to add § 1410.45 to provide provisions regarding certain incentive payments authorized by the 2018 Farm Bill and incentive payments that may be made available at the sole discretion of CCC. The 2018 Farm Bill mandates a one-time sign-up incentive payment for the initial enrollment of certain land and CRP conservation practices, equal to 32.5 percent of the amount of the first annual rental payment of the land and practices. The 2018 Farm Bill also provides authority for CCC to provide incentive payments to encourage proper tree thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land. Such incentive payments cannot exceed 100 percent of the total cost of thinning and other practices. In addition, the 2018 Farm Bill provides discretionary authority for CCC to provide other incentive payments; however, such incentive payments are not required.

#### Enhancement Programs

Prior to the 2018 Farm Bill, the annual payment limitation did not apply to a State, or political subdivision or agency thereof, in connection with State enhancement programs approved by FSA. The State enhancement programs were separate and apart from CREP (discussed below). The 2018 Farm Bill removes the provisions regarding the State enhancement programs. Accordingly, this rule removes 7 CFR 1410.50.

#### Violations

This rule revises 7 CFR 1410.52 to clarify that the provisions regarding termination of a CRP contract are applicable to termination whether in whole or in part, consistent with the revisions made to this rule in §§ 1410.32 and 1410.33. In addition, this rule revises § 1410.52 to remove the crop insurance purchase requirement, as it was eliminated under the Agricultural Act of 2014.

#### Termination of CRP Contracts

This rule revises 7 CFR 1410.53 to clarify that the provisions regarding termination of a CRP contract are applicable to termination whether in whole or in part, consistent with the revisions made by this rule in §§ 1410.32, 1410.33, and 1410.52.

#### Payments Not Subject to Claims

This rule revises 7 CFR 1410.57 to clarify that any payment or portion of payment due any person under 7 CFR part 1410 will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

#### Miscellaneous

This rule revises 7 CFR 1410.62 to remove the provisions regarding research projects because CCC determined such provisions are not necessary.

#### Permissive Uses

Uses of land enrolled in CRP is generally limited to the list of uses specified in 7 CFR 1410.63, unless provided for elsewhere in the regulation. The intent of such limits is to ensure that land enrolled in CRP is not used for activities that would tend to defeat the conservation purposes of CRP, while allowing certain activities that are authorized by the Food Security Act of 1985, as amended, and are consistent with the CRP goals and purpose. Specifically, the permissive uses must be consistent with the provisions of the Food Security Act of 1985, as amended, and 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.

The 2018 Farm Bill amendments remove provisions for managed harvesting and routine grazing of CRP land. The 2018 Farm Bill specifies the activities permitted on CRP land, and which activities result in a reduction to the annual rental payment, and the amount of the reduction, if any. Further,

the 2018 Farm Bill also specifies the criteria that must be met in order to conduct emergency haying, grazing or other emergency use of the land.

All haying and grazing activities will be conducted only after a detailed conservation plan is developed for such activity in accordance with the 2018 Farm Bill, this rule, and the Natural Resource Conservation Service (NRCS) Field Office Technical Guide (FOTG).<sup>1</sup> The conservation plan will ensure the long-term viability of the CRP conservation practice and cover while protecting and enhancing the soil, water, wildlife, and other natural resources. All haying and grazing activities must be conducted consistent with the terms and conditions of the conservation plan.

The 2018 Farm Bill prohibits all haying and grazing activities if such activity for that year would cause long-term damage to the cover on that land. It also prohibits all haying and grazing activities on land enrolled in CRP through CREP or a State Acres for Wildlife Enhancement (also known as SAFE) project, unless such activity is specifically permitted as part of the CREP agreement or State Acres for Wildlife Enhancement project, as applicable.

This rule revises 7 CFR 1410.63 to add new provisions and revise existing provisions for permissive uses consistent with the 2018 Farm Bill amendments, reorganize the section for improved clarity, and to make minor technical corrections.

#### Transition Incentives Program

The 2018 Farm Bill amends the provisions regarding the Transition Incentives Program (TIP) by changing the time period in which the beginning, socially disadvantaged, or veteran farmer or rancher can make conservation and land improvements, including preparing to plant an agricultural crop, and begin the certification process under the Organic Foods Production Act of 1990, from 1 year before the end of the CRP contract period to 2 years before the end of the CRP contract period. Further, the 2018 Farm Bill changes the provisions to allow a lease with a term of less than 5 years and option to purchase to qualify as an eligible lease for the transfer of eligible land under the Transition Incentives Program. The 2018 Farm Bill also removes the requirement that the owner or operator had to be a retired or

<sup>1</sup> Information about FOTG and state FOTGs are available on the NRCS website at <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/>.

retiring owner or operator to be eligible to participate in the Transition Incentives Program.

This rule revises 7 CFR 1410.64 to add and revise provisions required by the 2018 Farm Bill for the Transition Incentives Program, reorganize the section for improved clarity, and make minor technical corrections.

#### **Pilot Programs**

The 2018 Farm Bill adds two new pilot programs to CRP, the CLEAR 30 Pilot Program and SHIPP. Only certain land devoted to specific practices enrolled in CRP in the last year of the CRP contract is eligible to be enrolled under CLEAR 30. For CLEAR 30, the practices eligible are limited to those continuous signup practices that provide water quality protection by helping to reduce sediment loadings, nutrient loadings, and harmful algal blooms. A fact sheet regarding the practices eligible under CLEAR 30 will be provided on a USDA web page. Under CLEAR 30, producers must enroll land under a 30-year contract in exchange for annual rental payments.

SHIPP authorizes enrollment of certain cropland in the prairie pothole region of a State on a pilot basis. The deadline for enrollment is December 31, 2020. To be eligible to be enrolled, the cropland must have been planted or considered planted to an agricultural commodity during each of the 3 crop years preceding enrollment and must be verified to be less-productive land as compared to other land on the farm. Land that was enrolled in the CRP in any of the 3 crop years immediately preceding enrollment under SHIPP is not eligible for enrollment. Under SHIPP, producers enroll land under contracts for 3, 4, or 5 years in exchange for annual rental payments. FSA will not provide any financial assistance for the cost of installing or establishing the approved cover, except for participants who are beginning, limited resource, socially disadvantaged, or veteran farmers or ranchers, who may receive financial assistance in the form of cost-share up to 50 percent of the eligible cost of installing eligible cover. Under SHIPP, the only approved cover is the lowest practicable cost permanent vegetative cover.

This rule revises 7 CFR part 1410 to add §§ 1410.70 and 1410.80 to provide the provisions related to SHIPP and CLEAR 30, respectively.

#### **CREP**

The 2018 Farm Bill adds provisions for CREP. CCC began implementing CREP in 1997. Through CREP, CCC entered into agreements with States,

their political subdivisions or agencies to use the CRP to cost-effectively address specific conservation and environmental issues of the State and the nation. Proposals, developed locally and submitted for approval by the Secretary, address resource concerns, provide for cooperation with the CREP partner, present clear goals with measurable objectives, and detail non-federal financial contributions by the partners. The 2018 Farm Bill included as potential partners under CREP Indian tribes and nongovernmental organizations, in addition to State governments and political subdivisions of states. It also specified terms and conditions that must be included in CREP agreements, provided minimum contribution requirements for nongovernmental organizations, and provided authority for certain actions and activities related to riparian buffers enrolled under a CREP agreement. The 2018 Farm Bill provisions relating to CREP agreements do not affect or modify CREP agreements existing as of December 20, 2018, unless the signatories to the existing agreements mutually agree to modify such agreements to include 2018 Farm Bill provisions.

This rule revises 7 CFR part 1410 to add § 1410.90 to provide the provisions related to CREP.

#### **Miscellaneous Conforming and Editorial Changes**

In addition to the changes required by the 2018 Farm Bill and the other changes discussed above, this rule includes other changes to make the CRP regulations consistent with the Food Security Act of 1985, as amended, and improve clarity. For example, some parts of the regulation were reorganized to be in a more logical order and easier to understand. Obsolete and erroneous parts and citations have been removed or corrected, as applicable. In general, this rule amends CRP regulations in 7 CFR part 1410 to implement changes required by the 2018 Farm Bill and make technical changes relevant to CRP implementation, for example, correcting erroneous citations.

#### **Effective Date and Notice and Comment**

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs CRP for payments to participants and thus falls within that exemption. Further, the promulgation of regulations to implement the programs of Chapter 58

of Title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35), and
- To use the authority in 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effective date of 60-days after publication to allow for Congressional review. This rule is major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. As noted above, the 2018 Farm Bill exempts this rule from the Congressional Review Act effective date delay requirement. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, FSA and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective upon publication in the **Federal Register**.

#### **Executive Orders 12866, 13563, 13771 and 13777**

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, "Enforcing the Regulatory Reform Agenda," established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this interim rule as economically significant under Executive Order 12866, "Regulatory

Planning and Review,” and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](http://regulations.gov).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. OMB guidance in M–17–21, dated April 5, 2017, specifies that “transfer rules” are not covered by Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FSA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

### 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 cost-benefit assessment analyzes the costs and benefits of this interim rule. The 2018 Farm Bill, mandates

changes to the CRP regulations specified in the interim rule.

Among other things, the 2018 Farm Bill extended enrollment authority to September 30, 2023, and incrementally increases overall enrollment caps from 24 million acres in FY 2019 to 27 million acres in FY 2023. The 2018 Farm Bill also sets a goal of enrolling 2 million acres of grasslands; authorizes up to \$12 million in incentive payments to encourage management of CRP tree stands to improve wildlife habitat; and authorizes up to \$50 million for TIP payments (including \$5 million for technical assistance costs). It also revises haying and grazing rules.

The 2018 Farm Bill makes certain mandatory changes that were in the past discretionary to USDA. For example, in the past, USDA had discretion to determine whether signing incentive payments (SIPs) were offered and at what level. Under the 2018 Farm Bill, SIPs are mandatory for all new continuous sign-up practices and are set at 32.5 percent of the annual rental rate. In addition, the 2018 Farm Bill limits annual rental payments to 85 percent of average county rental rates for general sign-up and to 90 percent for continuous sign-up.

USDA continues to have discretion in certain cases. For example, the 2018 Farm Bill mandates that USDA offer one-time practice incentive payments (PIPs). USDA has discretion in setting the level of those payments, which can range up to 50 percent of the cost of installing the practice.

The 2018 Farm Bill also added two pilot programs. Under the CLEAR 30 pilot, acres in CLEAR practices expiring under the 2018 Farm Bill may be eligible for 30-year contracts. No acreage limitation is specified in the statute, although CLEAR 30 contracts are subject to the 27-million-acre CRP enrollment cap. The Soil Health and Income Protection Pilot Program covers up to 50,000 acres in the Prairie Pothole region. The program limits enrollment to the least productive croplands on the farm, enrolled lands must have been in cropland use in the three preceding years, and no more than 15 percent of the cropland on the farm can be enrolled.

Since FY 2006, CRP financial assistance outlays have averaged \$1.8 billion annually. Had the 2014 Farm Bill continued, outlays would have increased over time, largely due to the increasing share of continuous sign-up enrollment, which is more expensive than general enrollment sign-up. Under the 2018 Farm Bill, financial assistance outlays are expected to average \$2.2 billion annually as the acreage cap is

increased and cash rents—a critical component in the CRP rental payment—have remained relatively stable and, in some cases, increased. When discounted at either 3 percent or 7 percent, annualized outlays are \$2.1 billion.

### Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by the Administrative Procedures 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 CCC and FSA are not required by the Administrative Procedure Act or any law to publish a proposed rule for this rule. The Secretary is required by section 1246 of the Food Security Act of 1985, as amended, to issue an interim rule effective on publication with an opportunity for comment. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in CRP and in doing so receive its benefits. Compliance with the provisions of CRP regulations is only required for those entities who choose to participate in this voluntary program.

### Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). While OMB has designated this rule as “economically significant” under Executive Order 12866, “. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects.

As part of this CRP rulemaking, FSA prepared a Programmatic Environmental Assessment (EA) to evaluate alternatives and anticipated impacts. The draft EA was announced through an FSA press release on September 27, 2019, and a Notice of Availability published in the **Federal Register** (84 FR 52868–52869); it was made available on FSA’s NEPA website and by request (<https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index>); comments were accepted for 30

days (through October 27, 2019) from the public, other agencies, and Tribes; responses to those comments were incorporated into the final EA, as appropriate; and, as no substantive changes to the alternatives or impacts analyses were warranted to incorporate these comments into the final EA, a Finding of No Significant Impact (FONSI) was signed. As detailed in the EA, for each individual CRP action, FSA will complete a site-specific environmental evaluation to ensure no extraordinary circumstances or other potentially significant impacts exist, individually or cumulatively. To notify interested parties, the final EA and signed FONSI will be available for review for 30 days following the publication of this document in the **Federal Register** on the FSA website at <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index>.

#### **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 notice 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, which requires intergovernmental consultation with State and local officials.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do 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.

The USDA’s Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does have significant Tribal implications. OTR has determined that further Tribal consultation under Executive Order 13175 is not required at this time. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1–2, 2019, at the National Museum of American Indian, in Washington, DC, and on June 26–27, 2019, in Sparks, NV. The portion of the Tribal Consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of Title II session on May 1, 2019. If a Tribe requests additional consultation, FSA and CCC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

#### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State,

local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined in Title II of UMRA for State, local, or Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **Federal Domestic Assistance Programs**

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

#### **E-Government Act Compliance**

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

#### **List of Subjects in 7 CFR Part 1410**

Acreage allotments, Agriculture, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

For the reasons discussed above, CCC revises 7 CFR part 1410 to read as follows:

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

- Sec.
- 1410.1 Administration.
  - 1410.2 Definitions.
  - 1410.3 General description.
  - 1410.4 Maximum county acreage.
  - 1410.5 Eligible persons.
  - 1410.6 Eligible land.
  - 1410.7 Duration of contracts.
  - 1410.8 Conservation priority areas.
  - 1410.10 Restoration of wetlands.
  - 1410.11 Farmable Wetlands Program.
  - 1410.13 Grassland enrollments and permitted uses.
  - 1410.20 Obligations of participant.
  - 1410.21 Obligations of the Commodity Credit Corporation.
  - 1410.22 CRP conservation plan.
  - 1410.23 Eligible practices.
  - 1410.30 Signup.
  - 1410.31 Acceptability of offers.
  - 1410.32 CRP contract.
  - 1410.33 Contract modifications.
  - 1410.40 Cost-share payments.
  - 1410.41 Levels and rates for cost-share payments.
  - 1410.42 Annual rental payments.
  - 1410.44 Average adjusted gross income.

- 1410.45 Incentive payments.
- 1410.51 Transfer of land.
- 1410.52 Violations.
- 1410.53 Executed CRP contract not in conformity with this part.
- 1410.54 Performance based upon advice or action of the U.S. Department of Agriculture.
- 1410.55 Access to land under CRP contract.
- 1410.56 Division of payments and provisions about tenants and sharecroppers.
- 1410.57 Payments not subject to claims.
- 1410.58 Assignments.
- 1410.59 Appeals.
- 1410.60 Scheme or device.
- 1410.61 Filing of false claims.
- 1410.62 Miscellaneous.
- 1410.63 Permissive uses.
- 1410.64 Transition Incentives Program.
- 1410.70 Soil Health and Income Protection Pilot Program.
- 1410.80 CLEAR 30 Pilot Program.
- 1410.90 Conservation Reserve Enhancement Program.

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

#### § 1410.1 Administration.

(a) The Conservation Reserve Program (CRP) is administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA; and will be carried out by the FSA State and county committees (“State committees” and “county committees,” respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such county committee, including, but not limited to:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee will preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by producers will be used to determine eligibility for CRP

benefits. Furnishing the data is voluntary; however, the failure to provide data could result in CRP benefits being withheld or denied.

(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 CRP 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.

(g) The regulations in this part apply to all CRP contracts approved after December 6, 2019.

#### § 1410.2 Definitions.

(a) The definitions in part 718 of this title apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions also apply to this part:

*Agricultural commodity* means:

(i) Any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters;

(ii) Sugarcane planted or produced in a State; or

(iii) Alfalfa and other multi-year grasses and legumes grown in a rotation practice as approved by CCC.

*Agricultural Conservation Easement Program (ACEP)* 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.

*Annual rental payment* means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in CRP, including any incentive payments that are not specifically cost-share payments. For purposes of this definition, practice incentive payments, and incentive payments related to forest management are not considered part of annual rental payments.

*Approved cover* means permanent vegetative cover or water cover specified in an approved CRP contract.

*Carrying capacity* has the same meaning as “normal carrying capacity” defined in part 1416 of this chapter.

*Commercial pond-raised aquaculture facility* means any earthen facility from which \$1,000 or more of freshwater food fish were sold or normally would have been sold during a calendar year.

*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 district* means a political subdivision of a State, Indian 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.

*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.

*Conservation priority area* means an area designated with adverse water quality, wildlife habitat, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs.

*Conserving use* means a use of land that meets crop rotation requirements, as specified by CCC, for: Alfalfa, multi-year grasses, and legumes planted during 2012 through 2017; for summer fallow during 2012 through 2017; or for land on which the CRP contract expired during the period 2012 through 2017 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(b)(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 for prevented planting credit in accordance with part 718 of this title.

*Contour grass strip* means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

*Contract period* means the term of the CRP contract.

*Cost-share payment* means, unless the context indicates otherwise, the payment made by CCC to assist CRP participants in installing the practices required in a CRP contract.

*Cropland* means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

*Eligible partner* means a State, political subdivision of a State, nongovernmental organization, or an Indian Tribe.

*Erodibility index (EI)* means an index, as prescribed by CCC, 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.

*Federally-owned land* means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

*Field border* means a strip of permanent vegetation established at the edge or around the perimeter of a field the purpose of which is to provide food and cover for quail and upland birds in cropland areas.

*Field Office Technical Guide (FOTG)* means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared. (See <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/> to access your State FOTG.)

*Field windbreak, shelterbelt, and living snowfence* mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, that are designated as such in a conservation plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

*Filter strip* means a strip or area of vegetation immediately adjacent and parallel to an eligible water body, the

purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for such purpose.

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

*Grassland* means land described in § 1410.6(d).

*Grass waterway* means a shaped or graded channel that is established with suitable vegetation to convey surface water from terraces, diversions, or other water concentrations without causing erosion or flooding using a broad and shallow cross section to a stable outlet.

*Highly erodible land* means land determined to have an EI equal to or greater than 8 on the acreage offered.

*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.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*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.

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

*Offer* means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

*Perennial crop* means a crop that is produced from the same root structure for 2 or more years.

*Permanent vegetative cover* means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees for the contract period.

*Permanent wildlife habitat* means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other

environmental concerns for the contract period.

*Practice* means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and specifications as a part of a conservation management system.

*Prairie strip* means a strip(s) of diverse, dense, herbaceous, predominately native perennial vegetation designed and positioned on the landscape to most effectively address soil erosion and water quality by intercepting surface and subsurface water flow to remove nutrients, sediment, organic matter, pesticides, and other pollutants by deposition, absorption, plant uptake, denitrification, and other processes, and thereby reduce pollution and protect surface and subsurface water quality while providing food and cover for wildlife.

*Primary 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 CCC in consultation with the State technical committee established as specified in part 610 of this title.

*Riparian buffer* means a strip or area of vegetation immediately adjacent and parallel to an eligible water body of sufficient width, the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, and to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

*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.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include the following and no others unless approved in writing by CCC:

- (i) American Indians or Alaskan Natives;
- (ii) Asians or Asian-Americans;
- (iii) Blacks or African Americans;
- (iv) Hispanics; and
- (v) Native Hawaiians or other Pacific Islanders.

*Soil loss tolerance (T)* means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long-term productivity of the soil.

*State* means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

*State Technical Committee* means a committee established pursuant to part 610 of this title to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

*Technical assistance* means assistance in regard to determining the eligibility of land and practices, implementing and certifying practices, ensuring CRP contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with CRP to owners or operators, as approved by CCC, includes, but is not limited to:

(i) Technical expertise, information, and tools necessary for the conservation of natural resources on land;

(ii) Technical services provided directly to farmers, ranchers, and other eligible entities, including, but not limited to, conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(iii) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, including, but not limited to, technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Violation* means an action or inaction by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share payments, incentive payments, or annual rental payments.

*Water cover* means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

*Wellhead protection area* means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as

defined for public use by the Safe Drinking Water Act, as amended.

*Wetland* means land defined as wetland in accordance with provisions of part 12 of this title.

*Wetlands Reserve Program (WRP)* means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

#### § 1410.3 General description.

(a) Under CRP, CCC will enter into contracts with eligible producers to convert eligible land to an approved cover during the contract period in return for financial and technical assistance.

(b) A producer must obtain and adhere, for the contract period, to a conservation plan prepared in accordance with CCC guidelines and the other provisions of § 1410.22.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, including, but not limited to, tree planting.

#### § 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section the maximum cropland acreage that may be placed in 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 15 percent of the cropland in a county may be subject, in the aggregate, to a wetland reserve easement.

(b) The restrictions in paragraph (a) of this section:

(1) May be waived by CCC as follows:

(i) If such waiver 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

(ii) If the cropland, in a county, is enrolled under provisions as specified in § 1410.90, provided that the county government concurs with such waiver.

(2) Do not apply to cropland that is:

(i) Subject to an easement and enrolled in CRP as a shelterbelt or windbreak; or

(ii) Designated with subclass w in the land capability classes IV through VIII because of severe use limitations due to soil saturation or inundation, as determined by NRCS.

(c) The restrictions on acreage enrollment in this section are in addition to any other restrictions imposed by law.

#### § 1410.5 Eligible persons.

(a) To be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land seeks to participate without the owner's participation, then such operator must have operated such land for either at least 12 months prior to the close of the applicable signup period for enrollments under announced signup periods, or for at least 12 months prior to submitting an offer under continuous signup periods as provided in § 1410.30(b); further, such operator must provide satisfactory evidence to CCC that such operator will be in control of such eligible land for the full term of the contract period;

(2) If an owner of eligible land, such owner must have owned such land for either at least 12 months prior to the close of the applicable signup period for enrollment under announced signup periods, or for at least 12 months prior to submitting an offer for continuous signup periods as provided in § 1410.30(b), unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land, and the owner of the land, immediately before the foreclosure, exercised a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) The circumstances of the acquisition present adequate assurance that a new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, then the participation of an eligible owner or operator is also required.

(b) The provisions of this section do not apply to beginning, socially disadvantaged, or veteran farmers or ranchers who are eligible participants in the Transition Incentives Program as specified in § 1410.64.

#### § 1410.6 Eligible land.

(a) The provisions of paragraphs (b), (c), and (d) of this section do not apply to:

(1) The Transition Incentives Program as specified in § 1410.64;

(2) The Soil Health and Income Protection Pilot Program as specified in § 1410.70; or

(3) The Clean Lakes, Estuaries, and Rivers 30 (CLEAR 30) Pilot Program as specified in § 1410.80.

(b) To be eligible for CRP, land must be one of the following:

(1) Cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 4 of the 6 crop years from 2012 through 2017, provided that field margins that are incidental to the planting of crops may also be considered qualifying cropland; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity;

(2) Marginal pasture land that:

(i) Is located immediately adjacent and parallel to an eligible stream, other water body, or wetland, but excluding such areas as gullies or sod waterways or similar areas; and

(ii) Is capable, when permanent grass, forbs, shrubs, or trees are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, of either substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent eligible stream or water body, or serving other water quality purposes;

(3) Acreage enrolled in CRP during the final year of the contract period, unless such land is federally-owned, provided the scheduled expiration date of the current CRP contract is before the effective date of the new CRP contract;

(4) Land that meets the criteria specified in paragraph (d) of this section; or

(5) Land that meets all of the criteria in paragraphs (b)(5)(i) through (iii) of this section, which land will then be considered as land enrolled in CRP in the final year of the contract period, and therefore will be eligible to be offered for enrollment in CRP until September 30, 2020, provided the effective starting date of the new CRP contract is on or before October 1, 2020:

(i) The land was enrolled in CRP under a CRP contract, with a contract period of greater than 14 years, that expired on September 30, 2017, or September 30, 2018;

(ii) There was no opportunity for re-enrollment of the land in CRP prior to the end of the contract period; and

(iii) The conservation practice and approved cover under the expired CRP contract has been maintained in accordance with the terms of the expired CRP contract.

(c) Land qualifying under paragraph (b)(1) of this section must also meet at least one of the following criteria to be eligible for CRP:

(1) Be a field or portion of a field that:

(i) Is suitable for use as a permanent wildlife habitat, prairie strip, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, field border, or other suitable uses;

(ii) Poses an off-farm environmental threat or a threat of continued degradation of productivity due to soil salinity if permitted to remain in production, including any applicable recharge area;

(iii) Is an area determined eligible for CRP based on wetland or wellhead protection area criteria; or

(iv) Is suitable for use as a filter strip or riparian buffer, and the land:

(A) Is located immediately adjacent and parallel to an eligible stream, other water body, or wetland, but excluding such areas as gullies or sod waterways or similar areas; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration, of either substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent eligible stream, or water body, or serving other water quality purposes;

(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 approved by CCC;

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

(i) More than 50 percent of the field is enrolled as a riparian buffer or filter strip; or

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

(iii) With respect to both paragraphs (c)(3)(i) and (ii) of this section, the remainder portion of the field is determined to be infeasible to farm and enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate approved by CCC;

(4) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(5) Be devoted to certain covers that are established and maintained according to the FOTG, provided such land is not required to be maintained as such under any life-span obligations;

(6) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the acreage offered;

(7) Be within a State or federally identified wellhead protection area;

(8) Be within a designated conservation priority area; or

(9) Notwithstanding paragraph (b)(1) of this section, be cropland devoted to a perennial crop; such cropland will only be eligible for continuous signup practices authorized by § 1410.30(b) and practices authorized under a Conservation Reserve Enhancement Program agreement as specified in § 1410.90.

(d) Notwithstanding paragraph (b) or (c) of this section, to be eligible under a grassland signup as specified in § 1410.30(c), the land must be one of the following:

(1) Land that:

(i) Contains 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; and

(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; or

(2) Land that is enrolled in CRP in the final year of the contract period, provided the scheduled expiration date of the current CRP contract is the day before the effective starting date of the new CRP contract, and the provisions of paragraph (d)(1) of this section are met.

(e) Notwithstanding paragraphs (b), (c), and (d) of this section and §§ 1410.64, 1410.70, and 1410.80, land will be ineligible for enrollment if the land is one of the following:

(1) Federally-owned land;

(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 contract period;

(3) Land already enrolled in the CRP, unless authorized by paragraph (b)(3) of this section and § 1410.80;

(4) Land for which Tribal, State, or other local 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, except, such land may be eligible for enrollment in CRP if:

(i) The land is, at the time of offer, enrolled in CRP under an approved Conservation Reserve Enhancement Program agreement that was in effect on December 20, 2018, and was initially approved before January 1, 2014, including any amended or successor

Conservation Reserve Enhancement Program agreement; provided, that the CRP contract under which the land is enrolled is in the final year of the contract period, and the scheduled expiration date of the current CRP contract is before the effective starting date of the new CRP contract; or

(ii) The land is such other land in the State that CCC determines is both otherwise eligible for CRP and appropriate for enrollment in CRP; and

(iii) The land is enrolled in exchange for a 25 percent reduction to the annual rental payment that would otherwise be paid for such land were no such laws, ordinances, or regulations in effect;

(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; or

(6) Land devoted to hardwood trees that has been re-enrolled in CRP one or more times while it was devoted to hardwood trees; however, such ineligibility does not extend to:

(i) Forested wetlands enrolled under a Conservation Reserve Enhancement Program agreement or under a continuous signup as specified in § 1410.30(b);

(ii) Riparian buffers; and

(iii) Shelterbelts.

#### **§ 1410.7 Duration of contracts.**

(a) In general, except as provided in paragraphs (b) and (c) of this section and §§ 1410.70 and 1410.80, the CRP contract period will be for a term of at least 10 years, and up to no more than 15 years.

(b) The CRP contract period for land enrolled under a grassland signup as specified in § 1410.30(c) will be for a term of 10 years or 15 years, as requested by the producer.

(c) CRP contracts for land devoted to hardwood trees, shelterbelts, windbreaks, and wildlife corridors will be for a term of 10 years to 15 years, as requested by the producer.

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

#### **§ 1410.8 Conservation priority areas.**

(a) Subject to CCC approval, a State agency may submit proposals for conservation priority areas within guidelines established by CCC. Such submission must clearly define conservation and environmental objectives, and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, will not total more than 25

percent of the cropland in a State unless there are identified and documented exceptional environmental needs.

(b) A region may be eligible for designation as a priority area only if the region has actual significant adverse water quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(c) Conservation priority area designations will expire after 5 years unless re-designated, except they may be withdrawn before 5 years by CCC.

(d) In those areas designated as conservation priority areas under this section, cropland is considered eligible for enrollment according to § 1410.6(c)(8) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered).

#### **§ 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 CRP contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such land from CRP to a wetland reserve easement under WRP or ACEP, as appropriate. Transferred land 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 land was enrolled in CRP as specified in § 1410.42. Cost-share payments or applicable incentive payments need not be refunded unless specified by CCC.

(b) [Reserved]

#### **§ 1410.11 Farmable Wetlands Program.**

(a) In addition to other allowable enrollments, eligible land may be enrolled in the CRP through the Farmable Wetlands Program (FWP).

(b) Eligible owners and operators may enroll land in FWP provided that the land:

(1) Is a wetland, including a converted wetland, that has been planted or considered planted to an agricultural commodity during at least 3 of the immediately preceding 10 crop years and that does not exceed the size

limitations specified in paragraph (d) of this section;

(2) Is enrolled to be a constructed wetland that is to be developed so as to receive surface and subsurface flow from row crop agricultural production and is designed to provide nitrogen removal in addition to other wetland functions and that does not exceed the size limitations specified in paragraph (d) of this section;

(3) Was a commercial pond-raised aquaculture facility in any year during the period of calendar years 2002 through 2007; or

(4) Was cropped, after January 1, 1990, and before December 31, 2002, at least 3 of 10 crop years, was subject to the natural overflow of a prairie wetland, and does not exceed the size limitations specified in paragraph (d) of this section.

(c) In addition, land may be enrolled through FWP if the land is buffer acreage that provides protection for and is contiguous to land otherwise eligible under paragraph (b) of this section, subject to the provisions of paragraph (d) of this section.

(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:

(1) 40 contiguous acres per tract, for land made eligible by paragraph (b)(1) of this section;

(2) 40 contiguous acres per tract, for land made eligible by paragraph (b)(2) of this section;

(3) 20 contiguous acres for land made eligible by paragraph (b)(4) of this section, not to exceed 40 acres per tract; or

(4) A suitable buffer for lands added under paragraph (c) of this section.

(e) All participants subject to a CRP contract under this section must agree to establish and maintain, as appropriate, the practice described in paragraph (b) of this section in accordance with FOTG including, as appropriate, restoring the hydrology of the wetland and establishing vegetative cover (which may include emerging vegetation in water and bottomland hardwoods, cypress, and other appropriate tree species in shallow water areas).

(f) Offers for contracts under this section must be submitted under continuous signup provisions as specified in § 1410.30(b).

(g) The annual rental payment for land enrolled under this section will be determined in accordance with the provisions of § 1410.42 for cropland. In addition, any incentive payments in the form of annual rental payments provided for enrolling filter strips under

this part will also be provided to participants who enroll land under this section, provided the participant has a share of the annual rental payment greater than zero.

**§ 1410.13 Grassland enrollments and permitted uses.**

(a) Land may be enrolled in CRP under a grassland signup as specified in §§ 1410.30(c) and 1410.31(e) and (f).

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

(c) Land enrolled in CRP under a grassland signup may be eligible for the Transition Incentives Program as specified in § 1410.64.

(d) The following activities may be permitted on grassland enrolled in CRP according to an approved conservation plan:

(1) Common grazing practices, including maintenance and necessary cultural practices, 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 primary 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, when the manner, number, intensity, location, operation, and other features associated with such activity will not adversely affect the grassland resources or related conservation values protected under the CRP contract.

**§ 1410.20 Obligations of participant.**

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such CRP contract, in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control, and CCC agrees to a modified plan; however, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if:

(i) The failure to plant or establish such approved cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the CRP contract on which the participant could

practicably plant or establish to such approved cover, is planted or established to such approved cover; and

(iii) The land on which the participant was unable to plant or establish such approved cover is planted or established to such approved cover after the wet or drought conditions that prevented the planting or establishment subsided;

(3) Establish temporary vegetative cover either when required by the conservation plan or if the permanent approved cover cannot be timely established;

(4) Comply with part 12 of this title;

(5) Not allow grazing, harvesting, or other commercial or agricultural use of the land subject to such CRP contract, or the cover on such land, except as specified in this part;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such CRP contract, and take other actions that may be required by CCC to achieve the desired environmental benefits, and to maintain the productive capability of the soil throughout the contract period;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(8) Control, on land subject to such CRP contract, all weeds, insects, pests, and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as specified in the CRP conservation plan, and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other similar conservation factors;

(9) Be jointly and severally responsible, if the participant has a share of the annual rental payment greater than zero, with the other participants on the CRP contract, for compliance with the provisions of such CRP contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the CRP contract and this part; and

(10) On land devoted to trees, excluding windbreaks and shelterbelts, carry out thinning and similar conservation practices, as provided in the conservation plan to enhance the conservation benefits and wildlife habitat resources applicable to the CRP conservation practice on the land, and to promote forest management.

(b) [Reserved]

**§ 1410.21 Obligations of the Commodity Credit Corporation.**

CCC will:

(a) Share up to 50 percent of the cost with participants of installing eligible practices specified in the conservation plan for which CCC determines that cost sharing is appropriate and in the public interest, and at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to eligible participants for a period of years not in excess of the contract period an annual rental payment, including applicable and available incentive payments, in such amounts as may be specified in the CRP contract.

**§ 1410.22 CRP conservation plan.**

(a) The producer must obtain a CRP conservation plan that complies with CCC guidelines and is approved by NRCS.

(b) The practices included in the 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 wellhead, improve grassland, or achieve other environmental benefits as applicable. The participant must undertake maintenance activities on the land as needed throughout the contract period to implement the conservation plan.

(c) If applicable, a tree planting plan or forest stewardship plan must be developed and included in the conservation plan. Such tree planting or forest stewardship plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the conservation plan must address the goals included in the conservation priority area designation authorized under § 1410.8.

(e) Except for land enrolled under a grassland signup, as specified in § 1410.30(c), management activities must be conducted as needed throughout the contract period in accordance with an approved conservation plan. However, the planned management activity is not required in the case where a natural disaster or adverse weather event occurs that has the same effect of the planned management activity. CCC will not provide any cost-share payment for any management activities.

**§ 1410.23 Eligible practices.**

(a) Eligible practices are those CRP practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, trees, permanent wildlife habitat, and grassland improvements;

(2) Meet other environmental benefits, as applicable, for the CRP contract period; and

(3) Accomplish other purposes of CRP.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by CCC for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover will not include ponds for the purpose of watering livestock, irrigating crops, or raising aquaculture for commercial purposes.

#### § 1410.30 Signup.

(a) Offers for CRP contracts may be submitted only during signup periods as announced periodically by CCC, but not less often than once each year. Acceptability of otherwise eligible offers will be determined as provided in § 1410.31.

(b) Notwithstanding paragraph (a) of this section, CCC may hold a continuous signup for land to be devoted to particular uses. Generally, continuous signup is limited to those offers that provide appropriate environmental benefits, as determined by CCC, or that would otherwise rank highly under § 1410.31(b) and may include high priority practices including, but not limited to, filter strips, riparian buffers, shelterbelts, field windbreaks, living snowfences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, prairie strips, field borders, and practices to benefit certain approved wetlands and public wellhead protection areas.

(c) Notwithstanding paragraph (a) or (b) of this section, offers to enroll acreage specified in § 1410.6(d) may be submitted only during signup periods as announced by CCC. At least 1 ranking period will be announced subsequent to the announcement of offers specified in paragraph (a) of this section. Eligible offers will be evaluated and ranked as provided in § 1410.31(e) and (f).

#### § 1410.31 Acceptability of offers.

(a) Producers may submit offers for the amounts they are willing to accept as rental payments to enroll their acreage in CRP. The offers will, to the extent practicable, be evaluated on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and provided that the offer is not in excess of the maximum acceptable payment rate established by

CCC for the acreage offered. Acceptance or rejection of any offer, however, will be in the sole discretion of CCC and offers may be rejected for any reason as determined needed to accomplish the goals of CRP.

(b) In evaluating offers, different factors may be considered by CCC for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Soil productivity;

(5) Likelihood that enrolled land will remain in non-agriculture use beyond the contract period, considering, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan; and

(6) Cost of enrolling acreage in CRP.

(c) Notwithstanding paragraph (b) of this section, when all other appropriate factors are equivalent, CCC may give preference to offers from residents of the county or contiguous county where the offered land is located.

(d) Notwithstanding paragraph (a) of this section, acreage determined eligible for continuous signup, as provided in § 1410.30(b), may be automatically accepted in CRP if the:

(1) Land is eligible under § 1410.6;

(2) Producer is eligible under § 1410.5; and

(3) Producer accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in CRP or a lesser rate.

(e) For grassland signup offers:

(1) Notwithstanding paragraph (a) of this section, offers to enroll in CRP under grassland signup, as specified in § 1410.30(c), will be evaluated and ranked during an announced ranking period, on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and further provided that:

(i) The offered land is eligible under § 1410.6(d);

(ii) The producer is eligible under § 1410.5;

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

(iv) The offer ranks above the minimum ranking level needed for offer acceptance, as determined by CCC.

(2) Notwithstanding paragraph (e)(1) of this section, acceptance or rejection of any offer will be at the sole discretion of the CCC, 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 may be considered by CCC for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

(1) Existence of expiring CRP land;

(2) Land at risk of development or conversion; and

(3) Land of ecological significance, including land that:

(i) May assist in the restoration of threatened or endangered species under the Endangered Species Act of 1973;

(ii) May assist in preventing a species from being listed as a threatened or endangered species under the Endangered Species Act of 1973; or

(iii) Improves or creates wildlife habitat corridors.

#### § 1410.32 CRP contract.

(a) In order to enroll land in CRP, the producer must enter into a contract with CCC.

(b) The CRP contract is comprised of:

(1) The terms and conditions for participation in CRP; and

(2) The CRP conservation plan.

(c) For offers:

(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in § 1410.30.

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

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the land to be enrolled in the CRP and other eligible producers, if applicable.

(e) For the termination of CRP contracts:

(1) CRP contracts may be terminated in whole or in part by CCC before the end of the contract period if:

(i) The owner loses control of or transfers all or part of the acreage under the CRP contract and the new owner does not wish to continue the CRP contract;

(ii) The participant voluntarily requests in writing to terminate the contract, in whole or in part, and obtains approval from CCC;

(iii) The participant is not in compliance with the terms and conditions of the CRP contract;

(iv) All or part of the acreage under the CRP contract is enrolled in another

Federal, State or local conservation program;

(v) The CRP practice fails or is not established after a certain time period and the cost of restoring the practice outweighs the benefits received from the restoration;

(vi) The CRP contract was approved based on erroneous eligibility determinations; or

(vii) Such termination is needed in the public interest, or is otherwise necessary and appropriate to further the goals of CRP.

(2) A participant whose CRP contract has been terminated, in whole or in part in accordance with paragraph (e)(1) of this section, must refund all or part of the payments made by CCC with respect to the CRP contract, plus interest, and must also pay liquidated damages as provided for in the CRP contract, if directed to do so by CCC.

(f) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator becomes a successor to such contract within 60 days, or such other time as CCC determines to be appropriate, then such participant will not be required to refund previous payments received under the contract; provided, that no refunds of previous payments received will be required if such participant sells such land to, or such land is purchased for, the United States Fish and Wildlife Service; provided further, that no refunds of previous payments will be required if the person or entity to whom all or part of the right and interest in, or right of occupancy of, land subject to such contract reaches an agreement with CCC to modify the contract in a way that is consistent with the objectives of the program.

(g) The participants on a CRP contract will not be in violation of the terms of the CRP contract if:

(1) During the final year of the CRP contract period the land is enrolled in the Environmental Quality Incentives Program or Conservation Stewardship Program, as specified in parts 1466 and 1470 of this chapter, and the participant begins establishment of a practice under such programs; or

(2) During the 3 years prior to the end of the CRP contract period, the participant begins the certification process under the Organic Foods Production Act of 1990.

#### § 1410.33 Contract modifications.

(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in CRP, provided that such modification will be

considered a partial termination for purposes of § 1410.32(e);

(2) Permit the production of an agricultural commodity under exceptional circumstances during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of CRP; or

(4) During the last 2 years of the CRP contract period, facilitate a transition of land subject to the contract to a beginning, socially disadvantaged, or veteran farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods. For purposes of this paragraph (a)(4), “sustainable grazing and crop production methods” will be considered methods that would be designed as part of an overall plan defined on an ecosystem level to be useful in the creation of integrated systems of plant and animal production practices that have a site specific application that would:

(i) Enhance the environment and the natural resource base;

(ii) Use nonrenewable resources efficiently; and

(iii) Sustain the economic viability of the farming operation.

(b) CCC may modify CRP contracts to add or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) For the transfer of land into WRP, ACEP, or other Federal or State programs:

(1) CCC may terminate or modify a CRP contract in whole or in part when the land is transferred into WRP, ACEP, or other Federal or State programs.

(2) For contracts terminated or modified for enrollment in other Federal or State programs, participants will not be required to refund CRP payments or pay interest and liquidated damages to CCC, as otherwise required under this part.

(3) Notwithstanding paragraph (d)(2) of this section, participants must refund CRP signup incentive payments if land in CRP containing a wetland reserve easement is enrolled in ACEP.

(e) During the final year of the CRP contract period, CCC will allow an owner or operator to make conservation

and land improvements for economic use that facilitate maintaining protection of enrolled land after expiration of the CRP 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 (e) of this section will not be eligible to be re-enrolled in CRP for 5 years after end of the CRP contract period; and

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

#### § 1410.40 Cost-share payments.

(a) Cost-share payments will be made available to the participant if an eligible practice, or an identifiable unit thereof, including fencing and water distribution, has been installed in compliance with the appropriate standards and specifications. Cost-share payments are not subject to the provisions of § 1410.42(d).

(b) Except as provided in paragraph (c) of this section, cost-share payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any other Federal agency.

(c) Cost-share payments may be authorized for the replacement or restoration of practices for which cost-share payments have been previously allowed under CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads, or other conservation measures approved by CCC;

(2) The failure of the original practice was due to reasons beyond the control of the participant; and

(3) The benefits that would be received from the replacement or restoration of the practice outweighs the cost of replacing or restoring the practice.

(d) Limitations on cost-share payments include:

(1) The cost-share payment made to a participant will not exceed the participant's actual contribution to the eligible costs of establishing the practice.

(2) The amount of the cost-share payments, including practice incentive payments, may not be an amount that, when added to such assistance from other sources, exceeds 100 percent of

the actual cost of establishing the practice.

(e) CCC will not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the land subject to such CRP contract. Participants must refund to CCC all cost-share payments received under this part if other Federal cost-share assistance is received with respect to the same land.

(f) CCC may make cost-share payments for thinning of existing tree stands to benefit wildlife habitat and other resource conditions on enrolled land.

(g) In addition to cost-share payments, a practice incentive payment will be made available to a participant to whom CCC has made a cost-share payment after a determination that an eligible practice has been installed in compliance with the appropriate standards and specifications. The practice incentive payment will be considered a cost-share payment for purposes of this part, and is not subject to the provisions of § 1410.42(d). A practice incentive payment will be provided only for land enrolled under:

- (1) Continuous sign-up as provided in § 1410.30(b); or
- (2) The Conservation Reserve Enhancement Program as provided in § 1410.90.

#### **§ 1410.41 Levels and rates for cost-share payments.**

(a) CCC will not pay more than 50 percent of either the actual or average cost of installing eligible practices specified in the conservation plan.

(b) The average cost of performing a practice may be based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county.

(c) If there is any other sources of cost-share assistance:

(1) A participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP.

(2) A participant may not receive or retain CRP cost-share payments if other Federal cost-share assistance is provided for such acreage under any law.

(d) Notwithstanding paragraphs (a) and (b) of this section, cost-share payments for eligible seed related to the establishment of approved cover will not exceed 50 percent of the actual cost of the eligible seed mixture.

(e) Practice incentive payments will not exceed an amount equal to 50 percent of the actual cost of installing the eligible practice specified in the conservation plan.

#### **§ 1410.42 Annual rental payments.**

(a) Subject to the availability of funds, annual rental payments will be made in such amount and in accordance with such time schedule as specified in the CRP contract.

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

(c) The annual rental payment will be divided among the participants on a CRP contract as agreed to in such CRP contract.

(d) Limitations on annual rental payments include:

(1) The maximum amount of annual rental payments that a person or entity may receive, directly or indirectly, under CRP for any fiscal year must not exceed \$50,000. The regulations in part 1400 of this chapter will be used to determine if the limit has been reached or exceeded.

(2) Notwithstanding paragraph (d)(1) of this section, annual rental payments received by a rural water district or association for land enrolled in CRP for the purpose of protecting a wellhead may exceed \$50,000.

(e) In the case of a contract succession, annual rental payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments will be divided in such manner deemed appropriate by CCC, and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC will prepare a schedule for each county that shows the maximum soil rental rate CCC may pay and which may be supplemented to reflect special contract requirements. Such schedule may 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 will indicate, when appropriate, that:

(1) Offers by producers who request rental payments greater than the maximum payment rate for their offer will be rejected;

(2) Offers submitted under continuous signup authorized at § 1410.30(b) may be accepted without further evaluation when the requested payment rate is less than or equal to the maximum payment rate for the offer; and

(3) Otherwise qualifying offers will be ranked competitively based on factors established under § 1410.31 in order to provide the most cost-effective environmental benefits.

(g) In the case of an owner or operator who transfers acreage to a wetland reserve easement in accordance with § 1410.10, annual rental payments will be prorated based on the actual number of days the transferred acreage was enrolled in CRP.

#### **§ 1410.44 Average adjusted gross income.**

(a) Benefits under this part will not be available to persons or 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) The limit specified in paragraph (a) of this section may be waived in accordance with part 1400, subpart F, of this chapter.

#### **§ 1410.45 Incentive payments.**

(a) A signup incentive payment will be made to eligible participants only for the initial enrollment of certain land that is enrolled under:

(1) A continuous signup authorized in § 1410.30(b) for land to be devoted to particular uses as determined by CCC; and

(2) A Conservation Reserve Enhancement Program as specified in § 1410.90 for land to be devoted to particular uses as determined by CCC.

(b) The signup incentive payment will be:

(1) An amount equal to 32.5 percent of the amount of the first annual rental payment for the land referred to in paragraph (a) of this section, as determined by CCC;

(2) Divided among the participants on a CRP contract in accordance with their share of the annual rental payment as agreed to in such CRP contract;

(3) Considered an annual rental payment and thus subject to the provisions in § 1410.42(d); and

(4) Made only after the CRP contract is approved by CCC.

(c) A signup incentive payment will not be made for land that was previously enrolled in CRP or land currently enrolled in CRP that is re-enrolled.

(d) CCC may make 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. Incentive payments for such tree thinning and other practices will:

(1) Not exceed 100 percent of the total cost of the practice;

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

(3) Only be made to the extent that funds are available; and

(4) Not exceed \$200,000 per person or entity.

(e) Additional financial incentives may be provided to participants whose contracts are expected to provide especially high environmental benefits. Such incentives will be considered annual rental payments and subject to the provisions in § 1410.42(d).

#### § 1410.51 Transfer of land.

(a) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, such new owner or operator may be approved by CCC as a participant to a new CRP contract for the transferred land. Such new owner or operator must assume all obligations of the CRP contract of the previous participant.

(b) Cost-share payments will be made by CCC to the participant who established the practice.

(c) Annual rental payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(d) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such CRP contract within 60 days, or such other time period as CCC determines to be appropriate, then such CRP contract will be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage; and

(2) Will refund all previous payments received under the CRP contract by the participant(s) or prior participants, plus interest and liquidated damages, except as otherwise agreed to by CCC.

(e) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the CRP contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the CRP contract participants, such operator may continue to receive payments under such CRP contract if:

(1) The property is maintained in accordance with the terms of the CRP contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such Federal agency.

#### § 1410.52 Violations.

(a) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract in whole or in part.

(b) If the CRP contract is terminated in whole or in part by CCC in accordance with paragraph (a) of this section, the participant will:

(1) Forfeit all rights to further payments under such CRP contract for the terminated acres, and refund all payments previously received for the terminated acres, plus interest; and

(2) Pay liquidated damages to CCC in an amount as specified in the contract.

#### § 1410.53 Executed CRP contract not in conformity with this part.

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, CCC may terminate or offer to modify the CRP contract in whole or in part.

#### § 1410.54 Performance based upon advice or action of the U.S. Department of Agriculture.

The provisions of part 718 of this title relating to performance based upon the action or advice of an authorized representative of the U.S. Department of Agriculture are applicable to this part.

#### § 1410.55 Access to land under CRP contract.

(a) Any representative of the U.S. Department of Agriculture, or designee thereof, will, for purposes related to CRP, be provided by the producer or participant, as the case may be, with access to land that is:

(1) The subject of an offer for a contract under this part; or

(2) Under a CRP contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the producer or participant will provide the representative with access to examine

records for the land to determine land classification, erosion rates, or for other purposes, and to determine whether the terms and conditions of the CRP contract are being met.

#### § 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part will be divided as specified in the applicable CRP contract and CCC will ensure that producers who would have an interest in acreage being offered receive treatment that is equitable. CCC may refuse to enter into a contract when there is a disagreement among producers seeking enrollment as to a producer's eligibility to participate in the CRP contract as a tenant and there is insufficient evidence to indicate whether the producer seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the CRP contract period and the administrator of the estate fails to succeed to the contract; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by CCC.

(c) In addition to paragraph (b) of this section, tenants must maintain their tenancy throughout the CRP contract period in order to remain on a CRP contract. Tenants who fail to maintain tenancy on the acreage under CRP contract, including failure to comply with applicable State law, may be removed from a CRP contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a party to the CRP contract.

#### § 1410.57 Payments not subject to claims.

Subject to part 3 of this title, any payment or portion thereof due any person under this part will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

#### § 1410.58 Assignments.

Participants may assign the right to receive cash payments, in whole or in

part, as provided in part 1404 of this chapter.

**§ 1410.59 Appeals.**

(a) Except as provided in paragraph (b) of this section, a participant or producer seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for CCC may be appealed in accordance with procedures established in part 614 of this title.

**§ 1410.60 Scheme or device.**

(a) If CCC determines that a person has employed a scheme or device to defeat the purposes of this part, or any part of any CCC or USDA program, payment otherwise due or paid such person during the applicable period may be required to be refunded with interest as determined by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share, incentive, or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to a CRP contract, and who succeeds to the CRP contract, must report in writing to CCC any interest of any kind in such land that is retained by a previous participant. The interest will include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in the land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in the land other than an interest in the appreciation in the value of the land occurring after the loan was made. Failure to fully disclose interest will be considered a scheme or device.

**§ 1410.61 Filing of false claims.**

If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the CRP contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these

circumstances must be refunded, plus interest as determined by CCC and any amounts otherwise due to the participant will be withheld. The remedies provided for in this section will be in addition to any and all other remedies, criminal and civil, that may apply.

**§ 1410.62 Miscellaneous.**

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part will be paid to the participant's successor(s), as specified in part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part will be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part will be in addition to any other remedy, including, but not limited to, criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(d) When an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds may not be required from any participant on the contract to the extent CCC determines that waiver of such refund is appropriate.

(e) Cropland enrolled in CRP will be classified as cropland for the time period it is enrolled in CRP. After the CRP contract ends, such land will be removed from the classification of cropland if the county committee determines the land no longer meet the definition of cropland in part 718 of this title.

(f) As determined by CCC, 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.

**§ 1410.63 Permissive uses.**

(a) Unless specified in this part or otherwise approved by CCC, no uses of any kind are authorized on CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:

(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;

(2) The commercial shooting preserve is operated in a manner consistent with

the applicable State agency rules governing commercial shooting preserves; and

(3) The CRP cover is maintained according to the conservation plan.

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

(d) Wind turbines and associated access to the wind turbines may be installed on CRP acreage in numbers and locations as determined appropriate by CCC 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 25 percent reduction in the annual rental payment for the acres covered by the wind turbine and associated access acreage.

(e) The sale of carbon, water quality, or environmental credits may be permitted by CCC.

(f) There are specific activities that are permitted on specific land:

(1) The permitted activities provisions of paragraphs (f)(2) and (3) of this section do not apply to land enrolled under:

(i) A grassland signup authorized by § 1410.30(c);

(ii) The Soil Health and Income Protection Pilot Program described in § 1410.70;

(iii) The Conservation Reserve Enhancement Program described in § 1410.90;

(A) Except for land enrolled under Conservation Reserve Enhancement Program agreements executed before December 20, 2018; provided, that such agreements may be amended by mutual agreement to disallow such otherwise permitted activities; or

(B) Unless the approved Conservation Reserve Enhancement Program agreement under which the land was enrolled specifically permits such activity; and

(iv) A State Acres for Wildlife Enhancement project, unless the State Acres for Wildlife Enhancement project under which the land was enrolled specifically permits such activity.

(2) The following activities may be permitted on CRP acreage according to an approved conservation plan, without any reduction to the annual rental payment:

(i) Emergency haying, emergency grazing, or emergency use of the forage in response to a localized or regional drought, flooding, wildfire, or other emergency as determined by CCC on all practices, outside the primary nesting season, when:

(A) All or any part of the county in which the CRP acreage is located is designated as D2 (severe drought) or greater according to the United States Drought Monitor;

(B) There is at least a 40 percent loss in forage production in the county in which the CRP acreage is located; or

(C) CCC determines that CRP can assist in the response to a natural disaster event without permanent damage to the established cover;

(ii) Emergency grazing on all practices during the primary nesting season if payments are authorized for the county under the Livestock Forage Disaster Program under part 1416 of this chapter, at 50 percent of the normal carrying capacity determined in accordance with part 1416 of this chapter;

(iii) Emergency haying on certain practices, as determined by CCC, only outside the primary nesting season, if payments are authorized for the county under the Livestock Forage Disaster Program under part 1416 of this chapter, but on not more than 50 percent of the eligible CRP contract acres;

(iv) Grazing of all practices only outside the primary nesting season if included as an approved CRP contract management activity in accordance with § 1410.22;

(v) The intermittent and seasonal grazing of vegetative buffers, only outside the primary nesting season, that are incidental to agricultural production on land adjacent to the buffer provided such grazing:

(A) Does not destroy the permanent vegetative cover; and

(B) Retains suitable vegetative structure for wildlife cover and shelter outside the primary nesting season; and

(vi) Grazing on all practices only outside the primary nesting season if conducted by a beginning farmer or rancher who is a participant on the CRP contract with a share of the rental payment greater than zero.

(3) The following activities may be permitted on CRP acreage according to an approved conservation plan, but only in exchange for a 25 percent reduction to the annual rental payment for the acres on which the permitted activity occurred:

(i) Grazing of all practices not more frequently than every other year on the same land, except that during the primary nesting season the grazing will be subject to a 50 percent reduction in the stocking rate, as determined by CCC;

(ii) Haying and other commercial use (including the managed harvesting of biomass, but not the harvesting of vegetative cover) of all practices, on the condition the activity:

(A) Is completed only outside the primary nesting season;

(B) Occurs not more than once every 3 years; and

(C) Maintains 25 percent of the total CRP contract acres unharvested, in accordance with a conservation plan that provides for wildlife cover and shelter; and

(iii) Annual grazing of all practices, only outside the primary nesting season for the control of invasive species.

(g) Notwithstanding paragraph (f) of this section, haying and grazing will not be permitted on any land enrolled in CRP if such haying and grazing for that year would cause long-term damage to the vegetative cover on that land.

#### § 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, all the following must be met:

(1) The land must be enrolled in CRP;

(2) The conditions for the timing of the sale or lease of the land and to whom it must be sold or leased are:

(i) Beginning on the date of the end of the CRP contract period, the land must be sold or leased (under a long-term lease, or a lease with an option to purchase the land, including a lease with a term of less than 5 years and an option to purchase the 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; and

(ii) The sale or lease, as applicable, must take effect on the day immediately after the end of the CRP contract period;

(3) The CRP contract is modified in accordance with § 1410.33(a)(4);

(4) The land is not subject to an easement or other restriction that prohibits the use of the land allowed under this section; and

(5) The beginning, veteran, or socially disadvantaged farmers or ranchers must:

(i) Certify that they meet the definition of either a beginning or veteran farmer or rancher as defined in part 718 of this title, or a socially disadvantaged farmer or rancher as defined in § 1410.2;

(ii) Obtain an approved conservation plan prior to approval of the Transition Incentives Program contract; and

(iii) Implement sustainable grazing or crop production on land not re-enrolled in CRP in compliance with the conservation plan by the time specified in the conservation plan.

(b) Beginning in the last 2 years of the CRP contract period, the beginning, veteran, or socially disadvantaged farmer or rancher may:

(1) In conjunction with the contract participants, make conservation and

land improvements, including preparing to plant a crop, that are consistent with the conservation plan; and

(2) Begin the organic certification process under the Organic Foods Production Act of 1990.

(c) Eligible beginning, veteran, or socially disadvantaged farmers or ranchers may be eligible immediately to re-enroll certain partial field conservation practices in CRP, in accordance with the conservation plan and the provisions of this part, following the expiration of the CRP contract, provided that the beginning, veteran, or socially disadvantaged farmer or rancher has control of the land and meets all other qualifying conditions specified in this part.

(d) Eligible beginning, veteran, or socially disadvantaged farmers or ranchers will be eligible to enroll land in the Environmental Quality Incentives Program or the Conservation Stewardship Program, as specified in parts 1466 and 1470 of this chapter, provided that their offer to enroll otherwise meets all program conditions, and provided that the CRP contract has expired and the beginning, veteran, or socially disadvantaged farmer or rancher is either leasing or has possession of the property.

(e) As an incentive for selling or leasing land to a beginning, veteran, or socially disadvantaged farmer or rancher who is not a family member of the previous participants, CCC will pay 2 years of additional CRP annual rental payments at the same contract rate to the previous participants. The previous participants must certify in writing that the beginning, veteran, or socially disadvantaged farmer or rancher is not a family member.

(f) The previous participants 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 contract 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 contract or this part.

#### § 1410.70 Soil Health and Income Protection Pilot Program.

(a) Enrollments under the Soil Health and Income Protection Pilot Program will be administered under the provisions of this part, except where specifically provided otherwise.

(b) Notwithstanding § 1410.6(b) and (c), to be eligible under the Soil Health

and Income Protection Pilot Program, land must be cropland that:

(1) Is physically located within a Soil Health and Income Protection Pilot Program pilot area specified by CCC;

(2) Has been annually planted or considered planted to an agricultural commodity each of the 3 crop years immediately preceding the year in which the offer for enrollment is submitted; and

(3) Is verified to be less productive land, as compared to other land on the farm from which the land is offered for enrollment.

(c) Notwithstanding paragraph (b) of this section, land will be ineligible for enrollment under the Soil Health and Income Protection Pilot Program if the land was enrolled in CRP in any of the 3 crop years immediately preceding the year in which the offer for enrollment is submitted. Further, not more than 15 percent of the eligible land on a farm may be enrolled in the Soil Health and Income Protection Pilot Program.

(d) Notwithstanding § 1410.30, offers for contracts under the Soil Health and Income Protection Pilot Program may be submitted only during signup periods as announced by CCC. Further, eligible land may only be enrolled under the Soil Health and Income Protection Pilot Program through December 31, 2020. Acreage determined eligible in accordance with paragraph (b) of this section may be automatically accepted in CRP without further evaluation if:

(1) A producer is eligible under § 1410.5; and

(2) The producer accepts either the maximum payment rate CCC is willing to pay to enroll the acreage in CRP, or a lesser rate.

(e) The approved cover for land enrolled under the Soil Health and Income Protection Pilot Program is the lowest practicable cost permanent vegetative cover.

(f) Notwithstanding § 1410.40, CCC will not provide any cost-share payments for planting the approved permanent vegetative cover, except as provided for in paragraph (g) of this section.

(g) Notwithstanding paragraph (f) of this section and § 1410.41, CCC will provide cost-share payments of 50 percent of the eligible actual cost of installation of the approved permanent vegetative cover to beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers, upon a determination that the approved permanent vegetative cover has been planted.

(h) The contract period for land enrolled under the Soil Health and Income Protection Pilot Program will be

for a term of 3, 4, or 5 years, as requested by the producer.

(i) The following uses are permitted on land enrolled under the Soil Health and Income Protection Pilot Program:

(1) Without any reduction in the annual rental payment, the land may be:

(i) Made available for a walk-in access program of the applicable State; and

(ii) Hayed or grazed outside the primary nesting season, provided adequate stubble height of the cover is maintained to protect the soil as specified in the conservation plan;

(2) In exchange for a 25 percent reduction to the annual rental payment, and not being eligible to be insured or reinsured under the Federal Crop Insurance Act, the land may be harvested for seed outside the primary nesting season if included in the conservation plan.

(j) A CRP contract for land enrolled under the Soil Health and Income Protection Pilot Program may be terminated before the end of the CRP contract period by either:

(1) CCC, if CCC determines that such termination is appropriate; or

(2) The participant, upon the condition that all CCC payments made with respect to the CRP contract being terminated are refunded.

#### § 1410.80 CLEAR 30 Pilot Program.

(a) Notwithstanding § 1410.6(b) and (c), to be eligible under the CLEAR 30 Pilot Program, land must be:

(1) Physically located within a CLEAR 30 Pilot Program area, as announced by CCC;

(2) Devoted to a grass waterway, contour grass strip, prairie strip, filter strip, riparian buffer, wetland restoration practice, or other similar water quality practice that helps reduce sediment loadings, nutrient loadings, and harmful algal blooms; and

(3) Enrolled in CRP, in the final year of the CRP contract period, provided the scheduled expiration date of the current CRP contract is:

(i) On or after December 20, 2018; and

(ii) Before the effective starting date of the new CRP contract.

(b) The contract period for land enrolled under the CLEAR 30 Pilot Program will be 30 years.

(c) In addition to the provisions in § 1410.32 and elsewhere in this part, the CRP contract for land enrolled under the CLEAR 30 Pilot Program will:

(1) Permit repairs, improvements, and inspections on the land that are necessary to maintain existing public drainage systems; and

(2) Prohibit:

(i) Alteration of wildlife habitat and other natural features of the land, unless

authorized by CCC and provided for in the conservation plan;

(ii) Mowing or spraying chemicals on the land, unless such action is authorized by CCC to:

(A) Comply with Federal or State noxious weed laws;

(B) Comply with a Federal or State emergency pest management program; or

(C) Meet habitat needs of specific wildlife; and

(iii) Adoption of any other practice or action that would tend to defeat the purpose of CRP.

(d) Land enrolled under the CLEAR 30 Pilot Program may be used for compatible economic uses, including but not limited to hunting and fishing, managed timber harvest, or periodic haying or grazing, provided the use is:

(1) Included in the conservation plan; and

(2) Consistent with the long-term protection and enhancement of the conservation resource for which the land was enrolled.

(e) Notwithstanding § 1410.30, offers for contracts under the CLEAR 30 Pilot Program may be submitted only during a time period, as determined and announced by CCC, and only within the final year of the contract period of the CRP contract under which the land is currently enrolled.

(f) In addition to the provisions in § 1410.52, upon a violation of the terms and conditions of a contract for land enrolled under the CLEAR 30 Pilot Program, CCC may require the participant to refund all or part of any payments received under CRP plus interest and liquidated damages.

#### § 1410.90 Conservation Reserve Enhancement Program.

(a) An agreement executed under the provisions of this section will not effect, modify, or otherwise interfere with any Conservation Reserve Enhancement Program agreement in effect on or before December 20, 2018. In order to implement other provisions of this section, the signatories to a Conservation Reserve Enhancement Program agreement in effect on or before December 20, 2018, may mutually agree in writing to modify such agreement in such a manner.

(b) CCC may enter into a Conservation Reserve Enhancement Program agreement with an eligible partner to cost-effectively assist in enrolling otherwise eligible land in CRP.

(c) To enter into a Conservation Reserve Enhancement Program agreement with CCC, eligible partners must provide required matching funds. Such matching funds provided by the

eligible partners may be cash, in-kind contributions, or technical assistance. The amount and type of matching funds must be specified in the Conservation Reserve Enhancement Program agreement. At least one-half of the matching funds must be provided as a direct payment to eligible participants. The amount of matching funds an eligible partner must contribute under a Conservation Reserve Enhancement Program agreement will be either:

(1) 30 percent of the total cost of the project, unless a different amount is determined by negotiation between CCC and the eligible partner with whom CCC is entering into the Conservation Reserve Enhancement Program agreement, if the majority of the matching funds to carry out the agreement are provided by one or more eligible partners that are not nongovernmental organizations; or

(2) Not less than 30 percent of the total cost of the project, if a majority of the matching funds to carry out the agreement are provided by one or more nongovernmental organizations.

(d) Notwithstanding § 1410.40(d), cost-share payments, including practice incentive payments, from all sources may exceed 100 percent of the actual cost of establishing eligible practices, but only if specifically authorized by the Conservation Reserve Enhancement Program agreement. Furthermore, a participant may not receive or retain cost-share payments if other Federal cost-share assistance is provided for such acreage under any law.

(e) With regard only to land enrolled as a riparian buffer:

(1) The term “management” means an activity conducted by the owner or operator of the land after the riparian buffer is established to regularly maintain or enhance only the vegetative cover throughout the CRP contract period and in accordance with the conservation plan;

(2) Cost-share payments will be made available for approved management as provided for in the Conservation Reserve Enhancement Program agreement:

(i) If such activity has been completed in accordance with the conservation plan; and

(ii) In an amount as provided for in the agreement, but not greater than 100 percent of the normal and customary cost of such activity; but

(iii) No practice incentive payment will be made for such activity; and

(3) If provided for in the Conservation Reserve Enhancement Program agreement, a participant may plant food-producing woody plants as part of the

approved cover, provided such plantings:

(i) Contribute to the conservation of soil, water quality, and wildlife habitat;

(ii) Are consistent with recommendations of the applicable State Technical Committee;

(iii) Are consistent with the FOTG; and

(iv) Are provided for in the conservation plan.

(f) Participants may harvest from the food-producing woody plants specified in paragraph (e)(3) of this section only if the following conditions are met:

(1) The criteria in paragraph (e)(3) of this section are met;

(2) The participant agrees to a reduction in the annual rental payment commensurate with the value of the crop harvested;

(3) All the food-producing woody plant species within 35 feet of the water body the riparian buffer is buffering are only native plant species;

(4) The harvesting will not damage the approved cover or otherwise have a negative impact on the resource concern being addressed by the riparian buffer; and

(5) The harvesting is conducted in accordance with the conservation plan.

(g) In the case of a Conservation Reserve Enhancement Program agreement whose purpose is to address regional drought concerns, CCC may:

(1) Enroll otherwise ineligible cropland, marginal pastureland, or grassland, on which the resource concerns identified in the Conservation Reserve Enhancement Program agreement can be addressed if the enrollment of such land is critical to the accomplishment of the purposes of the agreement; and

(2) Determine annual rental payments so as to be consistent with similar Conservation Reserve Enhancement Program agreements, and to ensure regional consistency regarding such payments.

(h) Notwithstanding § 1410.30, generally, enrollment under a Conservation Reserve Enhancement Program will be held on a continuous signup basis. However, the terms and conditions of the Conservation Reserve Enhancement Program agreement will determine the basis of enrollment.

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**William Beam,**

*Acting Administrator,*  
Farm Service Agency.

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**Margo Erny,**

*Acting Executive Vice President,*  
Commodity Credit Corporation.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

RIN 3064-AE98

#### Assessments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is amending its deposit insurance assessment regulations to apply the community bank leverage ratio (CBLR) framework to the deposit insurance assessment system (CBLR Assessments final rule). The FDIC, the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) (collectively, the Federal banking agencies) are considering, and are expected to adopt, a final rule that provides for a simple measure of capital adequacy for certain community banking organizations (CBLR final rule). The CBLR Assessments final rule: prices all insured depository institutions (IDIs) that elect to use the CBLR framework as small institutions; makes technical amendments to the FDIC's assessment regulations to ensure that the assessment regulations continue to reference the prompt corrective action (PCA) regulations for the definitions of capital categories used in the deposit insurance assessment system; and clarifies that an IDI that elects to use the CBLR framework and also meets the definition of a custodial bank will have no change to its custodial bank deduction or reporting items required to calculate the deduction. The final rule does not make any changes to the FDIC's assessment methodology for small or large institutions.

**DATES:** The final rule is effective January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ashley Mihalik, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898-3793, [amihalik@fdic.gov](mailto:amihalik@fdic.gov); Daniel Hoople, Senior Financial Economist, Banking and Regulatory Policy Section, Division of Insurance and Research, [dhoople@fdic.gov](mailto:dhoople@fdic.gov); (202) 898-3835; Nefretete Smith, Counsel, Legal Division, (202) 898-6851, [nefsmith@fdic.gov](mailto:nefsmith@fdic.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Policy Objectives

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a risk-based deposit insurance