

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1410****RIN 0560-AG38****Conservation Reserve Program—Farmable Wetlands Pilot Program**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Conservation Reserve Program (CRP) regulations to implement provisions of Title XI of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act), that provide for enrollment, in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, of certain wetlands and buffer acreage on a pilot basis into the CRP under the Farmable Wetlands Pilot Program.

**DATES:** This regulation is effective April 30, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Preston, Conservation and Environmental Programs Division, USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513, Telephone (202) 720-9563.

**SUPPLEMENTARY INFORMATION:****Notice and Comment**

Section 1105 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387) requires that the regulations necessary to implement these provisions be issued as soon as practicable. It also provides that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

**Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and, therefore, was reviewed by the Office of Management and Budget (OMB).

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental impact assessment nor an Environmental Impact Statement is needed.

**Executive Order 12988**

This final rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and does not pre-empt State laws. Before any judicial action may be taken with respect to the provisions of the final rule, administrative remedies at 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any 1 year. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Federal Domestic Assistance Program**

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

**Paperwork Reduction Act**

Section 1105 of Public Law 106-78 requires that the regulations implementing these provisions be

promulgated and administered without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required.

**Background**

The purpose of the Conservation Reserve Program (CRP) is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enter into contracts for 10 to 15 years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible cropland to participate in the CRP. Offers are submitted in such a manner as the Secretary prescribes. The maximum rental payments CCC will pay reflect site-based soil productivity, prevailing local cash equivalent rental rates, and maintenance costs. Offers by producers who request rental payments greater than the amount CCC is willing to pay for their soil type are automatically rejected by CCC. Except for the continuous signup process, remaining offers are evaluated for possible acceptance based on a comparison of environmental benefits indicators with the rental payment cost. The continuous signup process does not include an evaluation based on environmental benefits indicators because only those practices designed to obtain high environmental benefits are eligible to be offered during the continuous signup. Acreage determined eligible and suitable to be devoted to continuous signup practices by the Secretary is automatically accepted into the CRP provided all other eligibility requirements are met.

**Substantive Changes**

Section 1102 of the 2001 Act amended section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831), which provides statutory authority for the CRP, to provide a Farmable Wetlands Pilot Program for the enrollment, in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, of certain wetlands and buffer acreage on a pilot basis into the CRP. Accordingly, as specified in the new statute, the

substantive CRP regulations are changed by this notice to create a new section, 7 CFR 1410.12, that provides that eligible owners and operators in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota may enroll certain wetland and buffer acreage into a new Farmable Wetland Pilot Program. Enrollment under this pilot may not exceed 500,000 acres for all States, and 150,000 acres in any one State. The maximum enrollment for both the wetland and buffer acreage, of an owner or operator, must not exceed 40 acres per tract. Wetlands also must not exceed 5 acres in size to be eligible for enrollment. Acreage enrolled must be cropland that has a cropping history in at least 3 of the most recent 10 years. These limitations are statutory. General CRP criteria that currently requires cropland to be physically and legally capable of being cropped will apply to this pilot program as will other requirements not inconsistent with the new law.

Acreage offered under this pilot program will be offered using the CRP's continuous signup procedures. Incentives that apply to certain continuous signup practices will be authorized for acreage enrolled under the Farmable Wetlands Pilot Program. Although the signup will be continuous, acreage enrolled through the Farmable Wetlands Pilot Program will not accrue to diminish previous continuous signup acreage goals. However, the 25 percent cropland limitation that applies to the amount of a county's cropland that may be enrolled in the CRP will apply to pilot enrollments.

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

Administrative practices and procedures, agriculture, conservation plan, grazing lands, and natural resources.

Accordingly, 7 CFR part 1410 is amended as follows:

### PART 1410—CONSERVATION RESERVE PROGRAM

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

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

2. A new section, § 1410.12, is added to read as follows:

#### § 1410.12 Farmable Wetlands Pilot Program.

\* \* \* \* \*

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Pilot provided for in this section, except that:

(b)(1) This pilot program is authorized only in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota;

(2) As determined by the Deputy Administrator, owners and operators in each of the States in paragraph (b)(1) of this section may enroll cropland that has been annually planted or considered planted to an agricultural commodity in 3 of the 10 most recent crop years, that:

(i) Is a wetland, including a converted wetland, as determined by NRCS or other technical authority, that does not exceed the size limitations of this section; and

(ii) Subject to other provisions of this section, is buffer acreage that provides protection for and is contiguous to the wetlands.

(3) An owner or operator may not enroll in this pilot program any wetland, or land in a flood plain, that:

(i) Is located adjacent to a perennial riverine system wetland as identified on the final national wetland inventory map of the Department of the Interior; or

(ii) Is located adjacent to a perennial stream identified on a 1–24,000 scale map of the United States Geological Service, when the area is not delineated on a final national wetland inventory map.

(4) Enrollment in the CRP under this pilot program must not exceed:

(i) 500,000 acres in all eligible States; and

(ii) 150,000 acres in any one State.

(5) The maximum size of any wetland described in paragraph (b)(2)(i) of this section shall be five contiguous acres.

(6) The maximum size of any buffer acreage described in paragraph (b)(2)(ii) of this section shall be the greater of:

(i) Three times the size of the wetland described in paragraph (b)(2)(i) of this section, or

(ii) 150 feet on either side of the wetland.

(7) The maximum total acreage enrolled in the CRP under this section, including any wetland and buffer acreage described in paragraph (b)(2)(ii) of this section, in a tract, as determined by the Deputy Administrator, of an owner or operator, is 40 acres.

(8) All participants subject to a CRP contract under this section must agree to restore the hydrology of the wetland described in paragraph (b)(2)(i) of this section to the maximum extent possible, as determined by the Deputy Administrator, in accordance with the FOTG.

(9) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30 of this part.

(10) Except as otherwise determined by the Deputy Administrator, all other requirements of this part shall apply to enrollments under this section and the Deputy Administrator by contract or otherwise may add such other requirements or conditions as are deemed needed or appropriate. Such additional limitations as apply include but are not limited to payment limitations and limitations on the amount of acreage that can be enrolled in any one county.

Signed at Washington, DC, on April 27, 2001.

**James R. Little,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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