DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 704 and 1410

RIN 0560–AE95

Conservation Reserve Program—Long-Term Policy

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

ACTION: Final rule.

SUMMARY: This final rule amends the Conservation Reserve Program (CRP) regulations to: Revise the terms and conditions for enrolling acreage in the CRP; update other program eligibility requirements; consolidate and reorganize all existing CRP regulations into one regulation; and eliminate unnecessary provisions. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage. This action is also part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: This regulation is effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Zavodny, 202–720–7333, or via E-mail at webmaster@wdc.fsa.usda.gov or on the FSA home page at http://www.fsa.usda.gov/.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be Economically Significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Benefit/Cost Analysis

To comply with Executive Order 12866, USDA prepared a benefit/cost analysis for the final rule. It analyzes the economic, environmental, and budgetary impacts of three alternative CRP enrollment scenarios. The first scenario assumes the maximum permitted enrollment level, 36.4 million acres. The second scenario assumes an enrollment level of 28.0 million acres. This level corresponds to the enrollment scenario included in the FY 1997 President's Budget Baseline that was published prior to enactment of the 1996 Act. The final scenario presents estimates of the enrollment situation that would occur if enrollment authority for new acreage had not been provided in amendments to the Food Security Act of 1985 (the 1985 Act) by the 1996 Act and no existing contracts are extended. Under this scenario, the expiration of existing contracts would result in an estimated decline in enrollment to 1.7 million acres by 2002.

Establishment of long-term vegetative cover on cropland reduces soil erosion and the quantity of soil and other agricultural pollutants that may reach water bodies and impair water uses. Proper CRP cover practices in certain areas of the Northern Plains and Mountain regions are extremely important to waterfowl and grassland bird species, both of which have experienced significant reductions in numbers until recent years. Enrollment of environmentally sensitive areas such as flood-prone and riparian acres benefits wildlife and water quality by providing cover for protection, moderation of the temperatures of streams and other water bodies, food sources for wildlife, and protection of waterbodies from sediment, pesticide, and nutrient pollution. Environmental benefits are also enhanced by enrollment of wetlands and associated uplands, and enrollment of habitats important to threatened and endangered species.

Comprehensive measures of the value of the environmental benefits obtained from enrolling environmentally sensitive acreage do not currently exist. Estimates reported in the literature for acreage currently enrolled in the program are mostly based on indirect measures or secondary sources. Such estimates could be used to provide rough approximations of the potential value of the benefits to be realized from the alternative enrollment level scenarios, but must be discussed with a great deal of caution and qualification. Some of the environmental benefits that have been estimated and applied to the CRP enrollment scenarios include: soil productivity ($150 million annually for the 28.0-million-acre scenario and $195 million annually for the 36.4-million-acre scenario), improved water quality ($350 million and $455 million, respectively), and increased consumptive and non-consumptive uses of wildlife ($1.5 billion and $2.0 billion, respectively). The sum of these 3 categories, which would only be a partial accounting of the environmental benefits, is $2.0 billion per year and $2.7 billion per year, for the 28.0-million-acre and 36.4-million-acre scenarios, respectively.

Enrollment of 28.0 million acres and 36.4 million acres is expected to increase annual net farm income from production of feedgrains, wheat, cotton, and soybeans, CRP payments, and production flexibility contract payments by about $5.8 billion and $7.6 billion, respectively, compared with the no CRP continuation scenario. The increased net farm income results from higher commodity prices, reduced production expenses, and higher CRP rental payments to participants. Compared with the no continuation scenario, corn, wheat, and soybean prices each average about 9 percent, 8 percent, and 11 percent higher, respectively under the 28.0-million-acre scenario, and about 12 percent, 15 percent, and 13 percent higher under the 36.4-million-acre scenario.

Average annual CRP outlays under the 28.0-million-acre and 36.4-million-acre options average about $1.1 billion and $1.2 billion, respectively, higher than under the no continuation scenario.

Because enrollment in CRP reduces planted acreage and commodity production and increases commodity prices, projected annual expenditures for feedgrains, wheat, cotton, and soybeans are estimated to be $3.7 billion and $4.9 billion higher with enrollment at the 28.0-million-acre and 36.4-million-acre levels, respectively, relative to the no continuation scenario for domestic purchasers. For foreign purchasers, average annual expenditures are $1.9 billion and $2.6 billion higher. Thus, impacts on commodity expenditures for all purchasers is about $5.6 billion and $7.5 billion annually. Consequently, the net economic costs of a 28.0-million-acre and a 36.4-million-acre program, compared with no continuation are $0.9 billion and $1.5 billion per year, respectively. The net economic cost is the sum of the impacts of the positive change to society in farm income, the negative impact to society of the increased expense for taxpayers from the CRP outlays, and the negative impact of the increased expenditures for a smaller quantity of commodities.

Comparison of the rough approximations of environmental benefits derived from the estimates for currently enrolled acreage, with the economic cost estimates derived from the analysis of projected enrollment under the 1996 Act provisions, results in total estimated annual benefits to society that exceed costs by $1.1 billion and $1.2 billion, respectively, for the 28.0-million-acre and 36.4-million-acre scenarios. The uncertainty of the magnitude of errors of the environmental benefits estimates, and to a lesser extent those of the economic costs estimates, makes evaluation of this preliminary comparison difficult. Making the comparison even more difficult is the incompleteness of the environmental estimates (e.g., values of

increased wetland conservation, endangered species habitat, trees and open spaces, and reduced nutrients and pesticides in the environment). If the environmental estimates were more complete, it is likely that the estimated net impacts to society of maintaining enrollment of both 28.0 million and 36.4 million acres would be higher, and the difference in benefits between the 28.0-million-acre option and the 36.4-million-acre option would be greater.

Risk Assessment

A risk assessment and related benefit-cost analysis are required to accompany proposed major rules, as defined under section 304 of Public Law (P.L.) 103–354. Because agricultural producers needed to know long-term objectives of the CRP as soon as possible in order to formulate production plans for 1997 and because completion of the regulatory analysis required by section 304 of Public Law 103–354 to accompany a proposed regulation was not practicable in the time available, the Director, Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), concluded that it was appropriate to extend the time allowed for completion of the required analyses. A general time line for conducting the required analyses developed by the Director, ORACBA, and the FSA involves a two-phase approach.

Phase 1. Available upon request are (a) an environmental assessment, and (b) an environmental risk assessment, (c) an outline of a benefit/cost analysis of mitigation measures, (d) a comparison of the relative risks managed by CRP and by other programs in the Department which address similar risks resulting from comparable activities, and (e) a plan for monitoring the risk reduction expected to occur as a result of the CRP in accordance with Public Law 104–127. Evaluation and monitoring would allow completion of a meaningful cost-benefit analysis of the current and potential enrollment practices compared to measured environmental benefits.

Phase 2. One year after the final rule is promulgated, the benefit-cost analysis of mitigation measures will be completed. This benefit-cost analysis will address the costs associated with implementation and compliance with the regulation and the qualitative and quantitative benefits of the regulation.

Initially, the principal focus of the CRP was to address the excessive erosion problems of highly erodible cropland. However, the development and widespread adoption of improved tillage systems have significantly increased producers' ability to control erosion on much of U.S. cropland at levels that do not cause substantial environmental degradation. Consequently, the focus of the program has been broadened to include those situations where long-term conversion of cropland to non-cropping uses is required to solve significant agriculture-related environmental problems.

The purposes of the risk assessment are to (1) identify and characterize the major production activities occurring on U.S. cropland that create stresses on the elements of the natural environment that CRP must protect under its legislative mandate, (2) identify the stresses that are created by these activities, (3) describe the adverse relationships between the stresses and the affected elements of the environment, and (4) estimate the amount of the adverse impacts.

Specific resource concerns or values to be protected that are defined in the 1985 Act include (1) soil erosion (including cropland productivity), (2) ground water and surface water quality, (3) habitat for wildlife (including threatened and endangered species), (4) wetland functions and values, and (5) compliance with Federal and State environmental laws including air quality.

The major agricultural cropping practices connected to the environmental risks include (1) disturbance of soil and land, (2) application of irrigation water, (3) application of pesticides, and (4) application of nutrients. Enrollment of cropland in CRP largely eliminates these activities as well as the stresses and adverse impacts.

The objective of the CRP risk assessment is to provide information that can assist program managers in developing guidelines, requirements, and policies that will lead to enrollment of acreage that addresses the most severe resource situations in the most cost-effective manner.

From the information reviewed, it is clear (and well recognized) that crop production activities can sometimes have adverse impacts on one or more elements of the natural resource base. The significance and severity of these impacts can vary significantly among geographic areas.

For example, soil and land disturbance can create excessive erosion that lead to reductions in the quality and productivity of soils, creates sediment that pollutes water bodies and destroys wetland, and becomes airborne and creates human health and safety problems. Land disturbance, especially land conversion to intensive row cropping uses (or conversions of wetlands) can also degrade important wildlife habitats.

Productivity losses resulting from soil erosion will likely average about 1 percent over the next 100 years for all U.S. cropland if erosion continues at the levels occurring in 1992. However, potential productivity losses are much greater for different commodities in different areas, e.g., more than 3 percent for corn and soybeans in the Lake States, and 2.3 percent for cotton in the Southern Plains.

Projected levels of sediment loadings from cropland total about 350 million tons per year, nearly 30 percent of total annual sheet and rill erosion. About two-fifths of the sedimentation occurs in the Corn Belt, but the Northern Plains and Appalachian regions also have significant sedimentation problems. Wind erosion resulting from cropping practices are projected to be about 940 million tons per year in the United States. Most occurs in the Great Plains, Mountain, and northern portions of the Pacific region. Airborne dust particulate matter problems are most significant in the Columbia Plateau area of southeast Washington State and the southern high plains region of Texas and New Mexico.

Conversion of grasslands and wetlands to cropping uses has contributed to a significant decline in habitat for many grassland and wetland bird and animal species, particularly in portions of the Corn Belt and Northern and Southern Plains regions. CRP can be useful in reducing threats to species population declines and in maintaining stable populations of wildlife.

Other significant problems include the contamination of surface and ground water supplies by nutrients (primarily nitrogen and phosphorous) and pesticides. Nutrient (fertilizer) use and runoff appear to be highest in the Corn Belt and Northern Plains regions, areas along the Mississippi River, and the eastern Coastal Plain.

Pesticide use is highest in the Corn Belt and the Northern Plains, while pesticide runoff potential is greatest in the Corn Belt, the southern portion of the Lake States, and along the Mississippi River in the Delta region. Areas with potential problems of pesticides leaching into ground water area are primarily located in the Southeast region, portions of the Corn Belt, and along the Mississippi River in the Delta region.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because 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 assessment that this rule does not have a significant adverse impact on the environmental, historical, social or economic resources of the Nation. Therefore, it has been determined that these actions will not require an Environmental Impact Statement.

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 on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, CCC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''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 one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires CCC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the 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 the Conservation Program–10.069.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be major under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). It has been determined that, pursuant to section 808 of SBREFA, it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to conduct a general sign-up period for the program in advance of this spring's planting season. Delay of the sign-up period beyond that time would unduly limit the supply of land available for enrollment in the CRP by not allowing for enrollment and planning in sufficient time for new contracts to be in effect on October 1 and thereby inhibit the ability of the program to achieve the important public benefits which were the purpose of the recent amendments to the CRP and the other provisions of the 1996 Act dealing with conservation. Accordingly, this rule is effective upon publication in the Federal Register.

Paperwork Reduction Act

Information collections contained in this rule have been previously cleared by OMB under 0560–0125.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. Before any action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Background

The purpose of 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 resource-conserving cover. CRP participants enroll contracts for periods from 10- to 15-years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. Applicants submit offers in such a manner as the Secretary prescribes.

The CRP is authorized by the 1985 Act. The Code of Federal Regulations (CFR) has contained two parts for the CRP: 7 CFR part 704 has contained provisions regarding the CRP acreage enrolled from 1986 through 1990 and 7 CFR part 1410 has contained provisions regarding the CRP acreage enrolled since 1991 under the amendments to the 1985 Act made by the Food, Agriculture, Conservation, and Trade Act of 1990.

An interim rule was published on August 27, 1996 (61 FR 43943), implementing provisions of the 1996 Act amendments.

The 1996 Act amended the 1985 Act to provide for extension of enrollment authority for up to 36.4 million acres at any one time through 2002 and a desire to improve the program, prompted development of a proposed rule which was published on September 23, 1996 (61 FR 49697), that sought comment on long-term CRP policies. The comment period ended November 7, 1996.

Proposed Rule Summary

Among other proposals, with respect to land eligibility, CCC proposed to change, in § 1410.6, the existing CRP land eligibility criteria to include, as eligible lands, wetlands and their appropriate associated acreage, as determined by CCC, certain acreage enrolled in the Water Bank Program (WBP) administered by the Natural Resource Conservation Service (NRCS), and certain cropland associated to noncropped wetlands, as determined appropriate by CCC. Wetlands are intrinsically valuable natural resources that provide important benefits to people and the environment. Wetlands improve water quality, reduce flood and storm damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands provide particularly important filtering functions because of their location between land and water. It was proposed for WBP land that certain WBP acreage, to the extent it otherwise meets statutory CRP criteria, would be eligible to be enrolled in the CRP during the final year of the WBP agreement.

Also, the 1985 Act authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period of 5 years, subject to redesignation. A number of these areas are approaching the expiration of their initial designation. The 1996 Act further amended the provisions regarding conservation priority areas under Environmental Conservation Acreage Reserve Program. The proposed rule set out proposed amendments to § 1410.8 to reflect the new provisions.

Further, CCC proposed to generally restrict the total cropland in a State that could be designated as a conservation priority area to no more than 10 percent. The rule proposed certain procedures for priority designations.

With respect to wetland enrollment, CCC proposed allowing additional incentives for such enrollments.

CCC also proposed to offer enhanced financial incentives, to obtain enrollments of filter strips, riparian buffers, field windbreaks, grass waterways, and acreage located in wellhead protection areas designated by the applicable State Agency or the Environmental Protection Agency (EPA).

The 1985 Act generally provided that no commercial use can be made of the enrolled CRP acreage but permits haying or grazing during droughts or similar emergencies. CCC also sought comment generally on haying and grazing of CRP land.

CCC noted that as a result of provisions in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1997 (the 1997 Appropriations Act), contract extensions would not be available in Fiscal Year (FY) 1997 and proposed that acreage already enrolled in the CRP could be offered for re-enrollment based on the same criteria applicable to other offers.

With respect to the unilateral early contract termination provisions for certain acreage authorized by the 1996 Act amendments, CCC proposed to expand the list of acreage not eligible for early termination to include: (1) All wetlands, not just those enrolled under signup 8 and 9 criteria; (2) land subject to frequent flooding, as determined by CCC; (3) EPA-designated wellhead protection areas; and (4) any wetland buffers that may be required according to the conservation plan to protect the functions and values of wetland acreage.

The proposed rule also proposed that the CRP would be carried out by CCC through the Farm Service Agency (FSA) using State and county FSA offices and that CCC intended to rank, competitively, all offers based on the environmental benefits index taking into account the Government cost of the contract except for those contracts the acceptance of which are known to provide especially high environmental benefits.

CCC proposed to use a system that considers, for indexing purposes, soil erosion, water quality, wildlife habitat, and cost while also considering other technical factors such as, but not limited to, recommendations of State technical committee, conservation priority areas, permanent wildlife habitat, tree plantings, wetlands functions and values, and conservation compliance requirements.

Additionally, there were four issues for which CCC sought comment but which were not the subject of proposed amendment to existing regulations: (1) Whether and in what manner CRP acreage could be devoted to the production of biomass crops and whether such use would be consistent with the policy and provisions of the 1985 Act; (2) periodic nonemergency haying or grazing of CRP acreage; (3) the relationship of priority designations for the CRP, Wetlands Reserve Program (WRP), and Environmental Quality Incentives Program (EQIP); and (4) the methodology of making priority designations. Further, the proposed rule, by consolidating parts 704 and 1410, set out the entirety of the program regulations for review and comment in preparing the program for future enrollments.

Summary of Comments

CCC received 3,467 comments concerning the proposed rule. Entities responding included individuals, State governments, local governments, State farm organizations, national conservation organizations, national farm and commodity organizations, and Members of Congress. Comments came from all States except Delaware, Maine, Nevada, and West Virginia, and comments came from the District of Columbia and Canada.

In addition to the comments received in Washington, D.C., USDA conducted public listening forums in each State where comments on the CRP proposed rule were made for inclusion in the administrative record. These comments were included in the development of this final rule.

Changes in this final rule from the proposed rule of September 23, 1996, are based upon CCC's experience in implementing CRP since 1986 and on consideration of the comments received. Numerous minor editorial and other changes have been made in the text and order of the regulations for clarity and to facilitate the application of the regulations.

General Comments

Many comments were not directed to the proposed rule itself, but to related matters such as the enrollment level of the program, program development, and geographical distribution of the enrolled acreage. There were other comments which were not germane to CRP, were vague, or were not submitted timely; those comments were not considered.

There were 487 comments supporting the implementation of the CRP and citing the individual or collective conservation, environmental, or other benefits of the program obtained as a result of CRP. These benefits included reduced soil erosion, improved air quality, enhanced wildlife habitat, surface and ground water conservation, commodity price and supply stabilization, and enhanced personal and community economies.

One comment suggested that any program changes should be made gradually rather than immediately as indicated in the proposed rule. If the proposed rule had proposed dramatic changes or shifts in policy, such a suggestion would have merit. However, since 1987, when the use of an Erodibility Index (EI) was initiated, CRP has evolved to a more environmentally-sensitive program. The proposed rule has merely continued these prior incremental changes and the changes set forth in the proposed rule are not as dramatic in nature as prior amendments.

Three comments suggested that no funding shifts occur between CRP and other farm programs. As a result of the 1996 Act, CRP is now funded through CCC's borrowing authority and implementation of the CRP will not affect CCC's ability to carry out other programs.

One comment suggested that more field personnel are needed to inspect and monitor producers who are receiving Government subsidies. FSA has a thorough compliance program which includes the annual review of contract compliance on a statistically significant sample.

Three comments suggested that the deadline for comments be extended and eight comments recommended timely approval of the final rule or no delays in signup. The comment deadline will not be extended due to the need to finalize this rule in a timely manner as set out above. Four comments suggested that the current program be extended for another year to fully assess the environmental and economic costs of the proposed rule. However, as indicated in the Program Changes section of the proposed rule, Congressional provisions contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contract expiring in FY 1997. CCC is very concerned that to delay action further could disrupt the farming and ranching community where planning is already underway for the upcoming cropping season. CCC intends to conduct a signup as soon as possible to alleviate any planning difficulties.

Four comments opposed the CRP because they suggested it was paid for by taxes, hurts new farmers, benefits foreign countries, or because of its

economic impact. Twenty comments suggested that the need to subsidize the agricultural community has passed and that the land with expiring CRP contracts should be returned to production. Several comments opposed unspecified program changes. Congress has, in the 1996 Act, reauthorized the CRP, and the CRP continues to provide environmental benefits as was outlined in the proposed rule.

One comment opposed the CRP being used as the all-purpose conservation program. CRP is operated in compliance with the 1985 Act. Another comment suggested that stricter regulations be implemented for people who have contracts for real estate investment purposes. The CRP regulations are designed to in fact assure the maximum benefit to the public for money spent in the program. The proposed regulations accomplish that function.

One comment suggested that deed restrictions may be placed subsequent to enrollment to maintain desirable environmental benefits. Post-contract deed restrictions are not prohibited by the 1985 Act.

Another comment suggested that the cost of returning CRP acreage to production would be a hardship. However, there are no CRP requirements as to the use of acreage after a CRP contract has matured.

One comment suggested that the proposed rule was too complex without offering any suggestions to simplify the final rule. CCC has endeavored to limit this rulemaking to ensure that it does not overreach its legislated authority in implementing the program while informing the public of CRP goals and policies. The final rule has been reviewed extensively for simplification wherever possible.

One comment suggested that CCC follow National Environmental Policy Act (NEPA) requirements regarding the impacts of the proposed rule. The proposed rule indicated that an environmental assessment had been completed with a finding that the proposed rule did not have a significant adverse impact on the environmental, historical, or social resources of the Nation, as required by NEPA.

Another comment suggested that the proposed rule imposes an unfunded mandate on conservation districts. While conservation districts perform a vital function in the development and implementation of CRP, the regulations for the CRP impose no mandates on anyone. The decision of a conservation districts to assist in CRP enrollments is purely voluntary.

Program Development

Seven comments opposed a perceived shift in emphasis from soil erosion to improvement of water quality. One comment supported a perceived change in CRP's emphasis from protecting individual's farms to protecting the ''public water.'' Three comments supported the expanded eligibility requirements and asked that erosion control remains a priority objective of the CRP. The water quality provisions under CRP are not new. Eligibility was expanded beginning in 1988 to include filter strips. In 1989, eligibility criteria was expanded to include cropped wetlands and areas subject to scour erosion.

Another comment suggested that CRP could be used to tie programs together and that there should be cooperation between local, State, and Federal Governments to provide innovative opportunities in ways that maximize private participation and flexible utilization for perennial crops, biomass production, or other creative initiatives. CCC continues to be responsive to initiatives that can be demonstrated to cost-effectively develop new uses and technologies consistent with the 1985 Act.

Two comments suggested pilot programs to implement provisions of the proposed rule. However, the 1985 Act provides no authority to conduct pilot programs.

Enrollment Level

Fifty-nine comments supported a program level of 36.4 million acres. Four comments opposed the projected decline of the CRP to 28.1 million acres by 2002, which was an estimate contained in the cost-benefit assessment section of the proposed rule. Another comment suggested any references to downsizing CRP be removed from the rule. However, neither the proposed nor final rules contain any reference to an authorized level. CCC intends to enroll up to 36.4 million acres by accepting the acreage that maximizes environmental benefits but must be able to adjust to changing circumstances.

One comment indicated that idling 36.4 million acres is not prudent but offered no concrete suggestions. Another comment suggested that the program be terminated over a three year period by terminating contracts now or agreeing to accept reduced rental payments with greater haying and grazing privileges. However, this is not consistent with the 1996 Act amendments. CCC will carefully consider the amount of acreage to enroll by maximizing environmental benefits and cost.

Two comments suggested that sufficient acreage remain available for enrollment for conservation priority areas or practices. CCC intends to continue its continuous signup of certain highly beneficial environmental practices.

Geographic Distribution

Five comments suggested that the enrollment distribution among States and regions of the country should not change. One comment was in favor of a geographical balance. However, CCC intends to enroll the most environmentally sensitive acreage to obtain the greatest nationwide benefit.

Other Issues

Fifty-seven comments generally favored the production of biomass crops on CRP. Fifty comments were generally opposed and of those, 29 comments were opposed because of potential harm to wildlife. CCC has adopted the policy outlined in the Conference Report accompanying the 1996 Act, which indicated that biomass production be considered an acceptable cover crop practice ''provided that no harvesting is allowed until after the contract is completed or terminated.'' In addition, the 1985 Act generally prohibits the commercial use of CRP acreage.

With respect to the periodic nonemergency haying or grazing of CRP acreage, three hundred and twenty-five comments were received. While the majority of respondents favored periodic nonemergency haying and grazing, there was a lack of consensus regarding how the process should be implemented. A number of comments were in support of some form of haying and grazing and a smaller number opposed the provision.

One comment suggested a forage reserve program with haying in blocks and not strips to preserve habitat. Another comment suggested a grass bank so that one producer could rest native grass by grazing CRP owned by another person. Three comments recommended that CRP contract holders be limited as to any profit earned from hay produced on CRP acreage.

In view of the divergence of opinions expressed by respondents on how the provision should be implemented, CCC will seek legislative amendments to modify the existing provisions relating to haying and grazing of CRP acreage and obtain specific authority for periodic managed haying and grazing. However, existing provisions of the 1985 Act generally prohibit the non-

emergency haying or grazing of CRP acreage.

With respect to issues concerning implementation of the conservation priority area authority applicable to CRP, EQIP, and WRP and the manner in which to consider redesignation of soon-to-expire conservation priority area designations, respectively, these issues are addressed in the discussion of § 1410.8.

§ 1410.1 Administration.

Four comments supported the inclusion of specific reference to the U.S. Forest Service and State forestry agencies for consultation on tree planting practices. However, three of the comments suggest making consultation with the Forest Service or State forestry agencies a requirement rather than an option. This recommendation will not be adopted because there are areas in the country where these services are not available.

Eighteen comments suggested that § 1410.1 be amended to provide that: ''CCC may consult with the U.S. Fish and Wildlife Service (FWS) or the State wildlife agency for assistance as is determined by CCC to be necessary for developing and implementing conservation plans and practices in a manner to optimize benefits to wildlife habitat.'' Several comments specifically stated that wildlife agencies should also be consulted on tree planting practices in addition to consultation with forestry agencies. Two comments suggest that FSA should take every opportunity to work with wildlife professionals to ensure that the USDA-mandated wildlife benefits of this new CRP are incorporated into contracts whenever possible. The FWS and State wildlife agencies are represented on State Technical Committees and the FWS is a member of a national multi-agency team established to provide recommendations to the Secretary on CRP policy. The Department also consulted with various wildlife agencies when formulating CRP policies. CCC and FWS will work together on as needed basis. Therefore, this suggestion was adopted.

There were several comments supporting the State and county FSA committees as the proper authorities to implement CRP including bid ranking, rulemaking, eligibility criteria, ranking plans and contract approval. CCC has delegated substantial authority to State committees which, acting upon recommendations from the State Technical Committees (see 7 CFR part 610) chaired by NRCS, assist in CRP operations within a State. Field level representatives of FSA and NRCS also participated in the development of issues prior to the preparation of the final rule.

One comment suggested that the rule should be amended to clearly identify the role of the State Technical Committees. The role of the State Technical Committees is defined in 7 CFR part 610.

One comment suggested that the local NRCS field office, along with local conservation districts, should have the ability to accept applications and approve contracts. Conservation districts are not federal agencies and, therefore, cannot obligate federal funds. During continuous signup, both NRCS and FSA have the ability to take requests for enrolling acreage in CRP. In order to maintain the fiscal integrity and consistency of the program, however, only one agency, FSA, will be responsible for approving contracts on behalf of CCC.

Five comments suggested that State ranking plans be reviewed by NRCS and FSA national offices to ensure all objectives of the program are met. The national offices of NRCS and FSA, acting on behalf of CCC, will review all proposed State ranking plans.

One comment suggested that rules for developing and applying an approved State ranking plan should be clear and available to those who will be affected by them and also suggests that offers in States with ranking plans should not be subject to ranking according to the national ranking plan. Another comment stated that national ranking was not desirable and that contracts should be approved at the local level. All State ranking plans will be public information and provided to interested applicants when requested. The national ranking process will only be used to determine the number of acres allocated to a State when State ranking plans are used. All offers will then be ranked according to the State plan. CRP contracts will be all approved in local FSA offices.

There were a number of comments suggesting that drainage districts be afforded special authority to approve or deny a producer's request or otherwise limit a request for enrollment to protect the mission of the drainage district. There is no authority for a district to control program benefits. However, they are free to make their concerns about particular practices known.

One comment suggested that contract approval be delegated to the local office level and implied that national ranking for acceptability is not desirable. CRP contracts are approved locally. The national office does not approve contracts. State FSA Committees, based on recommendations from State Technical Committees, determine whether a State or national ranking process is implemented. In States that use a national ranking plan, the national office uses an objective ranking process. In States that use a State ranking plan, the ranking process is used to determine the number of acres accepted in that State. In all cases, the CCC is attempting to achieve the maximum benefit for the nation as a whole.

§ 1410.2 Definitions.

Some commenters suggested that ''permanent wildlife habitat'' and ''wildlife corridor'' were used interchangeably in the rule. The permanent wildlife habitat was amended to make clear that it includes wildlife corridors.

One comment suggested the definition of permanent wildlife habitat is not adequate because it does not take into consideration fish habitat. As ''wildlife'' can include both terrestrial and aquatic species, this recommendation has not been adopted.

Three comments opposed the definition of ''predominately highly erodible field'' with no suggested change provided. Twelve comments suggested that because the definition of highly erodible land is land that has an erosion rate greater than ''T,'' it appears to penalize landowners who are doing a good job by preventing them from enrolling, while rewarding those who are doing a poor job of soil conservation. Another comment opposed the defining of highly erodible land as ''erosion rate greater than T.'' Two comments suggested that the NRCS definition for ''predominantly highly erodible'' be set to use a predominance percentage of 33⅓ if this definition is going to be used to determine CRP program eligibility. Another comment suggests changing the definition for ''predominantly highly erodible field'' by replacing ''66⅔ percent of the land'' with ''75 percent of the land.'' One comment suggested that in the definition of ''predominantly highly erodible field'' the special allowance for the participants who agree to plant trees be expanded to include, also, those who will plant native grasses or create shallow water area for wildlife. Three comments suggested changing the fourth sentence defining HEL to read ''having an erodibility index equal to or greater than 8 for both wind and water erosion and an erosion rate greater than T.'' One comment suggested adding ''or a combination of both'' in the definition of highly erodible land after the word ''erosion.'' One comment suggested replacing the word ''and'' with ''or'' in subparagraph (4)(i) in the definition of highly erodible land. One comment

suggested the definition of soil loss tolerance was inconsistent with the definition in the current highly erodible land regulations. The land eligibility provisions have been revised to be consistent with those published in 7 CFR part 12. Those standards are known and there is no need for an inconsistency for CRP eligibility determinations. Therefore, those lands basically eligible for CRP will include acreage which is subject to the conservation compliance provisions of 7 CFR part 12. Differences in erosion can be accounted for by ranking.

Two comments suggested that the definition of conservation district be amended to use the more generic reference ''State or territorial conservation district law, or tribal law.'' Another comment suggests the definition of conservation district include the term natural resources district. The definition in the proposed rule already included these terms and is consistent with the definition of conservation district in other USDA programs.

One comment suggested adding a definition for ''conservation priority area.'' This recommendation was adopted.

Six comments suggested that for purposes of this rule a shelterbelt renovation be included in the definition of ''field windbreak, shelterbelt and living snow fence.'' However, there is no need to modify the definition. Any windbreak, shelterbelt, or living snow fence that is no longer functioning properly for the intended purpose is eligible to be enhanced or restored.

Four comments suggested the creation and definition of ''State wildlife priority areas'' that could also be determined eligible as conservation priority areas and that these areas should be designated in consultation with State NRCS technical committee and state wildlife agency. The definition of conservation priority areas is sufficiently flexible to include this recommendation.

One comment suggested changing the definition of agricultural commodity in the CRP rule to the definition used in other 1996 Act programs. The term ''agricultural commodity'' is defined for CRP purposes by the 1985 Act.

Two comments suggested the definition of agricultural commodity be clarified to take into consideration tillage under crop residue management practices. The 1985 Act's definition is sufficiently flexible to consider tillage operations under crop residue management practices.

One comment suggested that the definition of ''agricultural commodity'' should treat crops produced by so-called ''no-till'' practices in the same manner as crops produced normally. This recommendation will not be adopted as it is unnecessary. So called ''no-till'' crops, as the term is normally used, do involve sufficient tilling for these purposes.

One comment suggested USDA add tall prairie grass windbreaks in the definition of ''windbreaks.'' This recommendation will not be adopted because there is no assurance that the longevity of the practice can be assured.

Several comments were received regarding definitions of ''cropped wetlands.'' One comment suggested adding a new definition of ''cropped wetland'' to mean ''any wetland farmed under natural conditions, any wetland designated a farmed wetland, or any restorable areas designated as prior converted cropland according to part 12 of this title.'' Another comment suggested defining ''cropped wetland'' to mean ''any wetland, farmed wetland or restored prior-converted wetland within a field that has been annually planted or considered planted to an agricultural commodity in two of the 5 most recent crop years.'' A third comment recommended adding language to the ''cropped wetland'' definition to include wetlands farmed under natural conditions, without manipulation. To provide for consistently with 7 CFR part 12, new definitions have been to the CRP rules for ''cropped wetlands,'' ''farmed wetlands'' and ''wetlands farmed under natural conditions.'' Those definitions draw on part 12.

One comment suggested adding a new definition for ''vegetative cover'' to mean native grasses or favorable introduced warm-season grasses, preferably multiple species and including some species of annual vegetation in planting mixtures. It is not appropriate to restrict vegetative cover as suggested. However, additional consideration may be awarded in the bidding process for more desirable covers.

One comment suggested that ''reducing water erosion'' needs to be added to the purposes included in the definition for ''field windbreak, shelterbelt, and living snowfence.'' The proposal is inconsistent with the windbreak standards and specifications and could cause rill and/or ephemeral gully erosion if a grassed waterway filter strip, or some other practice is not established along side of the windbreak.

Four comments suggested defining the term ''environmental benefits index'' to include the factors which comprise the ranking process. The recommendation was adopted.

One comment suggested the definition of a conservation plan should clearly indicate that the definition only applies to the CRP or, alternatively, that the requirement for vegetative cover should be modified. The definition has been modified to read ''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.''

One comment suggested the exception for land in terraces that are no longer capable of being cropped be removed from the definition of ''cropland.'' The purpose of 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, resource-conserving cover. Acreage that is no longer capable of being cropped has already been removed from crop production. Therefore, this suggestion is not being adopted.

One comment suggested the definition of a ''field'' is inconsistent with the 1985 Act. No basis was provided, or found, for the suggestion. Therefore, the recommendation was not adopted.

One comment suggested the term ''vegetation'' be defined and include woody vegetation in the definition. Vegetation is included in the final rule definition of ''permanent vegetative cover'' as ''perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a lifespan of 10 or more years, or trees.''

Eight comments suggested changing the 3.0 acre minimum requirement in determining a manageable unit. On review, the manageable unit provision was determined to be unnecessary and removed.

§ 1410.3 General description.

One comment suggested CRP regulations should target environmentally sensitive acreage while returning quality land back to production. This rule has been published consistent with CCC's goals to retarget CRP to more environmentally sensitive acreage. This includes a minimum erodibility index level to help ensure that CRP does not remove from

production land that is not environmentally sensitive. It is a goal of CCC to only retire land from agricultural production where the benefits to the Nation are greater from enrollment than in keeping land in continued agricultural production.

§ 1410.4 Maximum county acreage.

Some commenters suggested that there should be no exceptions to the 25 percent of a county's cropland enrollment prohibition and suggested setting an administrative limit of generally between 10 percent to 15 percent as a maximum. Section 1243(b)(1) of the 1985 Act provides that ''The Secretary shall not enroll more than 25 percent of the cropland in any county in the programs administered under the conservation reserve and wetlands reserve programs. . . .'' Accordingly, the reduction of the limitation would be inconsistent with the 1985 Act and would unduly limit CCC's options. As to any exceptions, CCC has heretofore not approved a recommendation for an exception unless NRCS, conservation districts, the Extension Service, and the Forest Service (FS) have made a favorable recommendation and only after local producers, agricultural-related businesses, and others were polled.

Regarding county and State acreage limitations, some suggested that a limitation should be implemented on land that can be placed in CRP by counties and States. Each State should have a minimum and maximum number of acres allotted to be maintained and the regulatory limits on total designated acreage should be flexible where there are direct and serious considerations for protecting sources for drinking water. Arbitrarily establishing limits for enrollment by State inhibits CCC from maximizing environmental benefits achieved per federal dollar expended.

§ 1410.5 Eligible person.

One comment suggested the term ''calendar'' be removed because the requirement is for one year not one calendar year. Another comment suggested the one year requirement be removed. Two comments suggested that the land ownership time requirement be eliminated if the goal of the program is erosion control and water quality. One comment concerned producers who assume CRP contracts who may not have owned the land to meet the necessary 1-year ownership requirement prior to the next CRP signup. After careful review, the term ''calendar year'' has been removed and replaced with the term ''12 months.'' The ownership eligibility requirement is a 1985 Act requirement and cannot be administratively eliminated. The proposed and final rule do not preclude those producers who succeeded to existing contracts within 12 months of the next CRP signup period from reoffering such acreage.

One comment supported reducing the land ownership requirement from three years to one year. This change is consistent with the 1996 Act amendments to the 1985 Act.

One comment suggested adding ''and grazing land'' following all references to cropland in § 1410.5. The term ''cropland'' has been replaced with the term ''eligible land'' now that certain marginal pasture land has been made eligible for CRP.

One comment suggested that if a landowner receives government money for their CRP land, the landowner should fit some sort of definition of a farmer. The 1985 Act does not restrict participation in the program to ''farmers.'' Eligible producers include owners and operators of eligible land; therefore, this suggestion will not be adopted.

§ 1410.6 Land Eligibility.

Cropping History Requirement

Nine comments suggested changes to the cropping eligibility requirement such as allowing flexibility to consider crop rotations or only requiring that acreage be planted or considered planted in two of the last ten crop years. Ten comments suggested that the cropping eligibility requirement be waived under emergency situations or for certain practices, such as filter strips and riparian buffers, or for certain land, such as land that has the potential to create erosion concerns, land subject to long term flooding, and land already devoted to waterways. The CRP is a voluntary program with the purpose of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long-term resource-conserving cover. The current cropping history requirement is necessary to obtain and maintain the purpose of the CRP consistent with the 1985 Act which, except for very limited situations dealing with marginal pasture lands, limits CRP eligibility to ''cropland.'' Therefore, these suggestions will not be adopted.

One comment supported the current cropland eligibility base period.

One comment suggested that land coming out of CRP should not automatically be eligible to re-enroll. Two comments suggest that land known to be going out of agricultural production should not be allowed to be offered for CRP. These suggestions have not produced a rule change as the relative value of offers is taken into account in the ranking process and there is no automatic eligibility for old CRP lands.

Two comments suggested that information be released to clarify whether land under CRP contract during the cropping eligibility base period would be considered as meeting the cropping eligibility requirements. Current CRP land may be offered for re-enrollment if its meets the new eligibility criteria. The Deputy Administrator of FSA may develop further refinements on this issue as needed to deal with delays in re-enrollment.

Erodibility Index

Several hundred comments were received regarding the provisions relating to the EI of 8. There was little agreement among respondents regarding the appropriate minimum eligibility standard.

Fourteen comments supported maintaining the EI enrollment eligibility level of 8 to make more acres of productive land available for farmers. One comment supported using a weighted average EI for eligibility.

Seventy-six comments generally opposed the erodibility criteria and suggest that land with an EI of less than 8 be eligible to be enrolled in the CRP. Some comments suggested eligibility levels ranging from 5 to 7 as an alternative. Four comments suggested that the EI of greater than 8 level be used as a guideline while allowing flexibility to enroll land with an EI of less than 8 when environmental or economic benefits justify such a decision. Eight comments suggest using the same EI level to determine both HEL compliance and CRP eligibility.

Sixty-four comments supported the concept of targeting only environmentally sensitive land and placing more productive land in production. Of the 64 comments, 39 comments suggested that an EI eligibility level of 15 or greater be established.

Thirty comments suggested giving more consideration to increasing land terrain as a qualifying factor. The concern is that previously eligible land does not qualify and is highly erodible from snow melt, rain, and wind.

The erodibility index will be retained in the final rule including the present minimum value of 8. At this level, a majority of the lands that have a serious erosion problem without adequate erosion protection will be basically eligible for enrollment in the program. Further, it is a natural break point consistent with HEL determinations under the conservation compliance provisions in 7 CFR part 12. Specifically, acreage that is considered HEL under the regulations at part 12 will be basically eligible to be offered for CRP. Acreage within a field that has been redefined will have to meet the weighted average EI of 8 criteria. In order to implement the program in a reasonable manner, some cut-off value which is consistent with the program's purpose must be used. The breakpoint value of 8 or greater has been determined to be the level which is most consistent with these purposes.

Water Bank Program

Four comments suggested that eligibility criteria be expanded to include lands no longer enrolled in the WBP or that were never enrolled in the WBP if the land is type 3 through 7 wetlands which are not naturally occurring. That is, if eligibility criteria are met, allow the land to be enrolled regardless of WBP status or relationship. Neither the proposed nor final rule precludes the enrollment of eligible acreage not previously enrolled in the WBP.

One comment suggested including an associated wetland buffer with any WBP contract acreage converted to the CRP. Neither the proposed nor the final rule preclude the enrollment of eligible acreage as wetland buffers. In addition, a substantial portion of acreage enrolled in the WBP included associated buffer acres.

Four comments suggested adding type 4 wetlands to the WBP acreage eligible to be converted to the CRP. Neither the proposed nor the final rule preclude WBP acreage which is type 4 wetlands that are normally artificially flooded from eligibility for the CRP. Such wetlands that are not normally artificially flooded should not be enrolled in the CRP because such enrollments would tend to defeat the purpose of the program because such lands are naturally permanently under water, which is not consistent with the eligibility criteria and purposes of the CRP.

Three comments suggested that artificially flooded WBP wetlands and wetlands with a history of cropping before WBP should be eligible for conversion to the CRP. Two comments suggested that eligibility for conversion from the WBP to the CRP apply to ''managed wetlands where water is intentionally applied to increase and/or enhance wetland functions and values and are classified as types 3 through 7 wetlands.'' Neither the proposed nor the final rule preclude types 3 through 7 wetlands that are normally artificially flooded from eligibility.

Three comments supported the eligibility of WBP acres for CRP. One comment suggests not limiting WBP acreage eligibility to just the final WBP year. The Department has determined that to enroll acreage that is currently enrolled in a land retirement program is not a cost-effective use of the CRP and defeats the purpose of the program. Accordingly, the suggestion is not adopted.

Cropped Wetlands

One comment suggested that allowing farmed wetlands into the CRP will lessen the incentive for farmers to enroll wetlands into long-term or permanent easements in the WRP. The CRP final rule allows the enrollment of cropped wetlands and appropriate associated upland acreage to restore and protect wetland functions and values without unduly competing with existing programs like WRP. The 1997 Appropriations Act limited fiscal year 1997 WRP enrollment to 130,000 acres. Permitting the enrollment of cropped wetlands in CRP allows CCC to obtain significant wildlife habitat, water quality, erosion control, and flood control benefits. The proposed rule inadvertently listed ''farmed wetlands'' as eligible for enrollment. Beyond ''farmed wetlands,'' cropped wetlands also includes ''wetlands farmed under natural conditions.'

Forty-four comments suggested that uplands associated with cropped wetlands be included as eligible land. Several comments provided suggested language for eligible land under the cropped wetlands provision: ''Acreage designated a farmed wetland or a wetland farmed under natural conditions by NRCS according to part 12 of this title, together with the appropriate amount of associated upland, as determined by the State Technical Committee to be necessary to protect the wetland and meet wildlife habitat needs.'' Most of these comments suggest a ratio of six upland acres per wetland acre or six upland acres per wetland basin; however, one of these comments suggested the upland acres should be kept to a minimum to balance the needs of the landowner. The final rule has been amended to provide that cropped wetlands and appropriate associated cropland will be basically eligible for CRP. In addition, appropriate associated cropland with noncropped wetlands will also be basically eligible to be enrolled providing the acreage meets other cropland eligibility requirements. The NRCS will determine the associated acreage that is necessary to maintain the viability of the wetland area not to exceed a 6 acre of cropland to 1 acre of wetland ratio.

Sixty comments suggested including wetlands as eligible land for the CRP. The purpose of the CRP is to cost-effectively assist eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The Department has determined that to enroll such acreage is not a cost effective use of the CRP and is not consistent with the purpose of the program. Accordingly, the suggestion is not adopted.

One comment opposed provisions making all cropped wetlands eligible for CRP. Cropped wetlands are a vital natural resource which provide significant environmental benefits. Therefore, this suggestion was not adopted.

Two comments suggested that the ''type 1–20'' wetland classification system be replaced with the Department of Interior's *Classification of Wetlands and Deepwater Habitats of the United States.* For example, ''type 3 through 7'' land would be reclassified as ''semipermanently flooded, permanently flooded, scrub, shrub, and wooded wetlands.'' The WBP authorizing legislation, however, bases WBP eligibility on the old classification system and that system should, therefore, for consistency and ease of administration, continue to be the standard used in this rule for types 3 through 7 wetlands. One comment suggested that FSA be assigned responsibility for delineating wetlands. Neither the proposed nor the final rule delineates wetlands or changes any wetland classifications. The final rule allows cropped wetlands, as determined by the NRCS, to be basically eligible for enrollment in the CRP. Accordingly, these suggestions are not adopted.

One comment suggested that opportunities for wetland conservation and restoration should remain available through both the WRP and the CRP. Neither the proposed nor the final rule restrict the opportunity for producers to enroll in the WRP.

One comment supported eligibility of wetlands but suggested that the need for regulatory reform not be replaced by what should only be an option similar to mitigation. It does not appear that permitting cropped wetlands to be enrolled in the CRP impacts any options available to producers regarding mitigation.

Air Quality

Four comments suggested that air quality be considered adequately for eligibility and evaluation. Two comments suggested that the purpose of the CRP be expanded to include air quality for lands contributing to an EPA designated PM<10 non-attainment area and went on to suggest that lands contributing to the air quality problem in such an area should be automatically eligible for the CRP. A factor has been added to the ranking process to evaluate air quality improvements from reducing airborne dust and particulate from cropland wind erosion. In addition, State FSA Committees have the authority to request conservation priority areas to target wind erosion concerns.

Wind Erosion

One hundred thirty four comments suggested that failing to adequately consider wind erosion as an eligibility or evaluation factor would unfairly exclude too many erodible acres from CRP eligibility. Several of the 134 comments suggested combining wind and water erosion when calculating the EI of a field. The EI measures soil erosion caused by both wind as well as water. The EI of a field is established based on the higher of the two indexes. Wind erosion receives equal weighting with water erosion in determining eligibility for enrollment in CRP. Furthermore NRCS has indicated that the EI values for wind erosion and water erosion should not be combined. While wind and water erosion may occur on the same field, both erosion types do not necessarily occur on the same acre nor do both types of erosion occur at the same time of the year. Thus, whatever is the most prevalent type of erosion, either wind or water, will be used to establish the EI value. Accordingly, these suggestions are not adopted.

Scour Erosion

One comment suggested that scour erosion eligibility criteria be flexible to allow scoured areas not adjacent to the water body to be eligible. One comment suggested that lands eligible under the scour erosion provisions of § 1410.6(c) should be planted to an appropriate tree species or mixed species of trees. Neither the proposed nor the final rule require land to be adjacent to a waterbody to meet the requirements of the scour erosion eligibility criteria. The proposed and final rule requires that cropland approved for enrollment under the scour erosion criteria to be planted to an appropriate tree species unless NRCS or FS certify that the site is not suitable for trees.

Wildlife

One comment suggested wildlife benefits not be an eligibility consideration for enrollment in the program. Five comments suggested that wildlife habitat should not be a sole criteria for CRP eligibility. Seventy comments suggested that a wildlife exemption or wildlife criteria be developed for determining eligibility. One comment suggested that a natural heritage eligibility criterion be developed for wildlife habitat.

Wildlife habitat will be positively benefitted from the inclusion of cropped wetlands, certain WBP acreage, special practices offered in the continuous signup provisions such as riparian buffers, and potentially through State and national conservation priority areas. Therefore, these suggestions will not be adopted.

One comment suggested that any permanent vegetative cover be acceptable wildlife cover as determined by the State wildlife agency in consultation with the State Technical Committee. It is the applicant's decision as to which practice and acreage to offer for enrollment. Certain practices requested by applicants are not intended for wildlife or do not provide wildlife benefits. Therefore, this recommendation is not being adopted.

Filter Strips and Riparian Buffers

Several comments were received regarding the size of filter strips and riparian buffers and the eligibility of such practices on certain land. Four comments suggested that a minimum width for filter strips be established. Four comments suggested 33 feet instead of 66 feet as was printed in a previous Agency directive. Nine comments suggested that the State FSA Committee or other local officials should be responsible for determining the size of filter strips and riparian buffers. One comment suggested filter strips and riparian buffers need to be clearly defined so farmers will have a quick snapshot of what these terms mean.

The size requirement of filter strips and riparian buffers is not incorporated as part of the CRP proposed or final rule. Previous versions of 7 CFR part 1410 included minimum and maximum size requirements for filter strips. The Conference Report accompanying the 1996 Act provided that the Managers intend for the Secretary, to the extent practicable, to consider local conditions when determining minimum required widths for vegetative strips in CRP. Complaints were received from the public that the regulation was not flexible enough to meet the needs of intended CRP sites in all States. Therefore, determinations on size requirements will continue to be made at the local level utilizing the NRCS office Field Office Technical Guide (FOTG).

Two comments suggested making riparian buffers on marginal pasture land eligible for CRP. Two comments suggested allowing filter strips and riparian buffers along dry streams, swales, sod waterways, and riparian buffer areas around feedlots. Ten comments suggested allowing filter strips along intermittent streams and drainage ditches, and making field end rows and headlands eligible for filter strips during continuous signup. Riparian buffers on eligible marginal pasture land may be offered for enrollment in the CRP but only for planting to trees, as is provided for in the 1985 Act. Filter strips and riparian buffers along dry streams, swales, feedlots and waterways do not obtain the benefits, goals, and objectives of such practices and is not consistent with the 1985 Act. Neither the proposed nor the final rule preclude filter strips adjacent to seasonal streams and drainage ditches.

Wellhead Protection Areas

Several comments suggested expanding or changing which agency's designation of wellhead protection areas will be used to determine CRP eligibility. After careful review, the final rule has been amended to provide that ''wellhead protection areas'' will mean those approved by appropriate State agencies or the EPA.

One comment suggested that wellhead protection provisions support local communities, but do nothing for rural areas. Wellhead protection areas may be designated in areas served by rural water lines and enrollment of surrounding land in the CRP can provide substantial water quality benefits.

One comment supported the inclusion of wellhead protection areas as environmentally sensitive lands eligible for the CRP.

Trees

One comment suggested that established pine stands on CRP land be renewed and remain in the CRP program to prevent conversion of the land back to crop production. Four comments suggested that CRP contracts planted to loblolly or slash pine should not be re-enrolled because of projected high retention rates, economic returns, and limited wildlife benefits. Any acreage currently in the CRP, is considered to be capable of being planted. Any untimely tree destruction could be accounted for in the ranking process. That process may also take other relevant factors into account.

Enrolling Existing Contracts

Sixty-six comments opposed the land eligibility requirements because land currently enrolled in the CRP may not be eligible to be re-enrolled. Several comments suggested allowing at least 50 percent of all land currently enrolled in the CRP to be re-enrolled regardless of the eligibility requirements. Several other comments suggested allowing at least 50 percent of all land enrolled in the CRP to be re-enrolled if wildlife benefits will be enhanced. As indicated in the proposed rule, the 1997 Appropriations Act effectively precludes the extension of any CRP contract in FY 1997. The eligibility criteria is designed to assure maximum achievement of the program's goals.

One comment supported the requirement for re-enrolled bids to compete with new bids.

Other Issues

One comment suggested no restrictive eligibility criteria be used to determine enrollment in the CRP. While this recommendation allows all acreage to compete based on the ranking process, it unnecessarily increases workload to a point that it may become unmanageable. Accordingly, this suggestion will not be adopted.

Six comments suggested that whole farm enrollment not be allowed. The 1985 Act does not direct that we deny enrollment of otherwise eligible acreage based on the size of the field and adding such a requirement would unduly limit CCC's options. Therefore, this suggestion will not be adopted.

Two comments suggested that land subject to flooding during one year out of ten years be eligible for the CRP even if there is no evidence of scour erosion. There are other Federal programs available to address these concerns. The CRP is not a flood risk reduction program. The final rule does not preclude such land from enrollment if it meets one of the land eligibility criteria.

Two comments suggested that a new eligibility criterion for ''Lands adjacent to existing CRP land, wildlife management areas, national wildlife refuges and other natural areas.'' Eligibility for such land is not necessary and may not be a cost-effective use of the CRP; however, CCC recognizes the benefits of such contiguity and such land will be appropriately considered under the ranking process. Therefore, these suggestions will not be adopted.

One comment suggested changing § 1410.6(h)(4) to include ''emergency priority areas'' as eligible areas along with designated conservation priority areas. The commenter was not clear as to what was intended as ''emergency priority areas;'' therefore, this comment will not be adopted.

One comment suggested clarifying the text of § 1410.6 by creating three lists that clearly define (1) all provisions which must be met if land is to be eligible, (2) exceptions under which those lands not meeting those provisions will still be eligible, and (3) conditions under which no lands will be eligible. Another comment suggests that the practices listed under § 1410.6(b) and § 1410.6(h)(5) be the same and include all those practices listed in § 1410.6(b). The final rule amends § 1410.6 to clarify these provisions.

Two comments suggested that wildlife habitat, riparian buffer, and contour grass strips be added to the list of special practices for which eligibility for otherwise eligible land is prescribed in § 1410.6(h)(5). Both the proposed and final rule provide eligibility for otherwise eligible land determined suitable for such practices. However, § 1410.6 has been amended for clarity.

Two comments suggested that references to acreage protected by easements or mortgage restrictions be removed or clarified. One comment suggested permanent conservation easements for either the entire farm or those portions being retired from cropping. These recommendations will not be adopted because there does not appear to be a substantial program benefit from enrolling limited lands, there is no authority in the 1985 Act to require conservation easements on new CRP contracts, and such easements could discourage enrollment and raise costs. On review, in addition, the provision appears to be sufficiently clear.

One comment suggested that language in § 1410.6(d)(1) be changed regarding the provision for the ineligibility of land where the water quality objectives can be obtained in another program if the CRP eligibility determination to be was unduly delayed. This has been accomplished by inserting the words ''in a reasonable and timely fashion'' after the word ''obtained'' in the regulation.

One comment suggested not allowing early termination if the intent is to re-offer the same land at a higher rental rate. The 1985 Act does not restrict early termination to only those persons who intend not to re-offer the acreage. The 1985 Act provides that such acreage may be re-offered during a subsequent signup period. Therefore, this suggestion will not be adopted. It should be further noted that the early termination provisions only apply to contracts initially enrolled prior to January 1, 1995. Accordingly, all contracts enrolled after that time regardless of whether the acreage was under an earlier contract will not contain the unilateral early termination authority.

One comment suggested that highly erodible land that can be farmed should be left in crop production, especially where technology has been improved to control erosion. The CRP is a voluntary program with the objective of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The CRP can be used to assist owners and operators to meet conservation compliance requirements and improve farming practices. To exclude highly erodible land that can be farmed from the program would limit CCC's ability to assist such land owners and operators and remove a valuable tool used to conserve the nations'' resources. However, CCC will endeavor to not enroll land which is better put to agricultural production. Accordingly, this suggestion is not adopted.

Two comments suggested that flooded pasture land and acres currently under water which has been cropped in the past should be eligible to enroll into CRP. Enrolling acreage not capable of being cropped is not cost-effective and tends to defeat the purpose of the program.

§ 1410.7 Duration of contracts.

Several comments suggested the Department should consider a shorter contract period for contracts that have already been extended or should allow contracts to be extended rather than be re-offered for enrollment or allowed to exit CRP in an orderly fashion. The 1985 Act provides that contracts can be no

less than 10 nor more than 15 years. Further, the 1997 Appropriations Act effectively precluded the extension of existing contracts in FY 1997.

Several comments suggested establishing varying years of duration of contracts between 10 and 15 years for various reasons, such as to lessen the effects of returning vast acres to crop production; for wellhead protection areas; tree planting; in return for contracting with Federal, State or local government to lengthen the term of the contract or for a permanent easement; or when landowners voluntarily commit to maintain the conservation measures for several years following contract expiration. In accordance with the requirements of the 1985 Act, the final rule provides that contracts devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors may be for the length specified by the producer, so long as the contract is not less than 10, and not more than 15, years in length. Otherwise, however, the contracts will be 10 years to preserve CCC's flexibility and reduce CCC's financial exposure.

§ 1410.8 Conservation priority areas.

One hundred ten comments were received recommending a specific area be identified as a conservation priority area. One comment supported the cropped wetland exemption but stated that for the Prairie Pothole region a wildlife exemption should be established to reaffirm the longstanding, successful relationship CRP has developed between sportsmen and farms. Another comment suggested the local conservation district be the lead agency responsible for nominating conservation priority areas in a State. The following have been designated as national conservation priority areas: Chesapeake Bay, Long Island Sound, Great Lakes region, and the Prairie Pothole region. Recommendations for State-designated conservation priority areas may be submitted by State FSA Committees based on recommendations from State Technical Committees to the Deputy Administrator for Farm Programs, FSA (Deputy Administrator). Land located within a designated CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment.

Seventy-five comments were received regarding the proposed 10 percent cropland limitation per State. Several comments suggested that the limitation was too low or should be otherwise adjusted such as allowing designation of an additional 10 percent for a wildlife conservation priority area or allowing State FSA Committees to exceed the 10-percent limit to meet Federal clear air standards. Other comments supported the limitation, or suggested it was too high or was arbitrary. After reviewing the public comments, CCC has determined to maintain the 10-percent limitation. Providing a limitation ensures the strength of the priority area concept by allowing designation of only the highest priority needs within a State. States will designate the purpose of the priority area as enhancing either water quality, wildlife habitat, or other environmental concerns. The 10-percent limitation could be exceeded for extraordinary circumstances, if approved by the Deputy Administrator. All recommendations for State-designated conservation priority areas will be reviewed by a national interagency team to ensure that the purpose is clearly defined and to ensure consistency among States and with the intent of the program.

Several comments suggested that a conservation priority area may need to be designated exclusively for wildlife or wildlife habitat plantings or should be used to protect lands from wind and water erosion, while others suggested that a priority area should not be established based on wildlife habitat alone. Several emphasized major watersheds for conservation priority areas especially where drinking water is impacted, and a few comments suggested that Soil and Water Conservation Districts or the State Technical Committee be given the authority to designate conservation priority areas. A few comments suggested priority areas be based on improving water quality and wildlife habitat that cannot be achieved through other programs or suggested that State wildlife agencies be allowed to designate conservation priority areas for wildlife. Several comments suggested that designation of conservation priority areas be allowed for the mitigation of natural resource emergencies or to give priority to those contracts already established. State FSA committees, based on their review of the recommendations of the State Technical Committee, will have the opportunity to recommend designation of conservation priority areas based on actual adverse impacts of agricultural activities on water quality, wildlife habitat, or other environmental concerns. Recommendations will be required to define the conservation and environmental objectives and analyze how CRP can cost-effectively address such objectives. The scarcity of a habitat or wildlife species is a key factor in establishing a wildlife habitat-based conservation priority area so the CRP can be effective as a means to avoid wildlife species population declines and preserve rare or disappearing habitat. The CRP is not an emergency program; other USDA programs exist to address emergencies affecting natural resources. Giving priority to contracts already established would decrease the Department's ability to achieve its goal of cost-effectively enrolling the most environmentally sensitive acreage.

Some comments suggested conservation priority areas should provide preference to but not automatic eligibility of lands offered within an area, or that location within a conservation priority area should become a part of an environmental benefits index for ranking rather than eligibility. Other comments suggested allowing a certain type of land to be considered as a conservation priority area rather than a specific geographic area. One suggested land type was center pivot corners. Another comment suggested geographically balancing the conservation priority areas, targeting areas with diverse conservation needs. Other respondents suggested that USDA should guard against conservation priority areas enrolling land which would not normally qualify under other criteria, or opposed establishment of conservation priority areas due to unspecified adverse impacts. One comment suggested the review of accomplishments within designated conservation priority areas at the time of redesignation.

Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. Location within a conservation priority area will be considered in the ranking process. State FSA committees have the authority, based on recommendations from State Technical Committees, to recommend a conservation priority area based upon a specific, identifiable land quality provided the priority area still serves the purpose of water quality, air quality, or wildlife habitat concerns and the State can provide a map indicating the location of the priority area. State FSA committees in all 50 States are eligible to submit recommendations for conservation priority areas. All existing CRP conservation priority areas have expired or have been withdrawn. State FSA committees must submit new recommendations for any conservation priority area to be effective. Each recommendation must include an evaluation and monitoring plan before the priority area can be approved.

Several comments addressed the issue of utilizing the same conservation priority areas for the CRP, WRP, and EQIP. Some stated that the conservation priority areas should be cross-referenced or coordinated so that benefits from multiple programs could apply; for example, CRP could be used in a WRP priority area to stop erosion from filling in a protected or restored wetland. One comment suggested including EQIP State-designated conservation priority areas for CRP. Another suggested that conservation priority areas should be implemented by receiving a percentage of the funding, with the remainder of the funds going to general disbursement. Others suggested it would be unwise to closely link the conservation priority areas for the different programs and that all three programs should have conservation priority areas. A respondent suggested, for example, that EQIP conservation priority areas will likely result in very little incentive for tree planting, but that the CRP has valuable tree planting incentives. Some comments suggested that it would not be possible to put CRP conservation priority areas in tandem with the other programs because EQIP and WRP are locally based and it is hard to set priorities at the national level, and that conservation priority areas set, for example, for the WRP should be used only for WRP, with the goal of permanent restoration of diverse wetland functions and values. One comment suggested that the implementation of conservation priority area authority should be limited to noninvasive technical assistance from USDA, and several comments suggested that the State or State FSA committee should establish conservation priority areas, not the Federal government.

State FSA committees, based on the recommendation of State Technical Committees, recommend conservation priority areas based on State specific environmental needs and objectives. The Deputy Administrator reviews State recommendations and makes approvals that are consistent with the goals and objectives of the CRP. Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. CRP funding is not determined based upon location inside or outside of a priority area but upon actual enrollment. Further, the CRP is available for all eligible acreage, including that located within WRP or EQIP conservation priority areas. State FSA committees, based on recommendations from State Technical Committees, may submit EQIP conservation priority areas as CRP conservation priority areas. The recommendation, however, must meet the requirements established for CRP, such as the 10-percent cropland limitation.

The Department agrees that the purposes of the CRP, WRP, and EQIP differ, but believes that the determination of conservation priority areas may be coordinated in the future.

§ 1410.9 Alley-cropping.

One comment suggested that alley-cropping not be limited to contracts requiring the planting of hardwood trees. That limit is consistent with the 1985 Act.

§ 1410.10 Conversion to trees.

Several comments suggested that the special provisions for converting CRP land to hardwood trees and for allowing three years, with certain limits and in certain cases, to plant the trees be extended to softwood trees. The limitation with respect to hardwood trees in both cases is statutory. Also it was suggested that site-specific selection of tree species for tree planting purposes be made by professional foresters. Such consultation can be obtained if needed.

Two comments suggested that the requirement to reduce the cost-share payment by the amount of the original cost-share payment be eliminated and a bonus equal to 25 percent of the cost of establishing these new covers be provided. The comments cannot be adopted. The 1985 Act provides that the Secretary will not incur any additional expense for the acres converted, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

Three respondents commented on the requirement that for conversions made under this section, the CRP participant must agree to also agree to participate in the Forest Stewardship Program. One supports the requirement while another suggests elimination and a third suggests that participants only be encouraged to participate when converting to trees. The required participation in the Forest Stewardship Program is statutory.

A few comments suggested that riparian corridors containing hardwood trees be added to the list of special to which the conversion provisions apply, and that the Deputy Administrator offer 15-year contracts on all CRP lands to be planted to hardwoods. Areas devoted to hardwood trees or which can be considered as wildlife corridors are already eligible under the proposed rule. Also, the rule provided that contracts for hardwood tree plantings could be for 10- to 15-years at the producer's discretion. Requiring that the producer always take a 15-year contract does not appear to be necessary or cost-effective.

One comment suggested that trees be harvested on acres that were converted to such plantings. The 1985 Act prohibits the harvesting of the trees during the contract period and prohibits any commercial use of trees on land that is subject to a CRP contract unless it is expressly permitted in the contract. Participants are, however, allowed to conduct pruning, thinning, stand improvement, or other activities consistent with customary forestry practices on land that is planted to trees. The landowner may harvest the trees only after the contract expires.

§ 1410.11 Restoration of wetlands.

Comments generally supported the restoration of eligible wetlands in the CRP but discouraged competition with the WRP. Comments varied on the administrative mechanism used to accomplish restoration. Two comments suggested that wetlands enrolled in CRP be required to be restored with no mention of incentives or additional compensation. Several comments related to incentives offered to landowners. One comment suggested a 25-percent bonus be added to the annual payment rate and two others support unspecified additions. Other incentives to be implemented should accomplish this objective at much lower cost to the program.

Two comments suggested that wetlands enrolled in CRP, regardless of initial enrollment date, either be restored with a 25-percent cost-share incentive or be transferred to WRP. The date restriction in the regulation is required by the 1985 Act. One comment suggested that the highest quality wetlands, regardless of size, be directed to the WRP for long-term protection. However, program requirements differ between CRP and WRP, making transfer an issue for landowner consideration. Inclusion of bonus points in the criteria are supported in two comments as a method of encouraging restoration.

One comment recommended limiting CRP enrollment to only wetlands so that land coming out would be available for production. The 1985 Act as it relates to CRP is directed at highly erodible lands, as well as other sensitive lands, and a limitation to wetland enrollment would,

accordingly, not be appropriate. Another comment suggested that land coming out of CRP contract should reflect the land use prior to enrollment, including wetlands. Once a contract expires, the participant is under no further obligation to abide by any terms or conditions of the CRP contract except as may be required to meet conservation compliance or wetland conservation provisions of 7 CFR part 12 to obtain benefits for certain other USDA programs. Such a change, in addition, would be cost-effective even if undertaken for a limited time.

One comment suggested that drained lands be eligible for CRP without requiring that ditches be plugged or tile broken. Although CCC will provide financial incentives to restore wetlands and additional consideration is provided in the ranking process for acceptance into the program, wetland restoration will only occur by voluntary agreement. Accordingly, this suggestion has not been adopted.

§ 1410.20 Obligations of participant.

Four comments suggested the reduction of allotments and quotas for tobacco and peanuts interferes with the economic soundness of the family farm and is too harsh on tobacco and peanut quota holders because they no longer have the ability to reduce their crop acreage bases. The respondents suggested that tobacco and peanut allotments and quotas be exempt from reduction. This recommendation is not adopted because the reduction is required by the 1985 Act. Crop acreage bases, for other crops which had deficiency programs, ceased being used after enactment of the 1996 Act.

The majority of comments on this section dealt with weed control. Two comments suggested that weed control should be mandatory. One of the two comments suggested that those not complying should be penalized only on those acres affected, not the entire contract acres and not to exceed one year's payment. The other comment suggests that NRCS and FSA accept and seek information and assistance from landowners or the general public without creating a contract compliance issue. CRP participants are required to maintain the acreage according to the conservation plan of operation developed by NRCS. Participants who do not comply with the plan are assessed payment reductions or the applicable contract acreage is terminated. Noxious weeds must be controlled in accordance with local laws on all contracts at all times. It is not necessary to file a complaint to have CRP acreage checked for compliance with the plan.

Eleven comments suggested weed control should be targeted only to those weeds officially listed as ''noxious weeds'' by the applicable State. Three comments suggest that the requirement for general control of weeds be eliminated. CRP practices are installed to meet a particular environmental or conservation objective. Plants that impede that particular objective must be controlled. CCC believes that it is important to control weeds that are detrimental to the purpose of the selected cover. Therefore, this recommendation will not be adopted. However, CCC will work with CRP participants to preserve the environmental benefits including, where appropriate, spot mowing and other spot treatments.

§ 1410.21 Obligations of the Commodity Credit Corporation.

One comment suggested that the meaning of ''subject to the availability of funds'' is unclear, given that rental payments will be made under the authority of the CCC. CCC is now authorized to use its borrowing authority to fund the CRP. However, it is necessary to maintain this language since CCC funds will not be earmarked in advance.

Nineteen comments were received in support of the incidental gleaning of certain CRP acreage and one comment was in opposition. Incidental grazing associated with gleaning of crop residues is authorized by the 1985 Act and can provide a worthwhile additional incentive for participants without a significant effect on other parties; such gleaning is limited both by the regulations and the conservation plan.

One comment suggested that should funds cease to be available, land enrolled in CRP would be freed from the contract obligations without causing default on the part of the landowner, and that the landowner would be provided at least 12 months' notice of USDA's termination. Another comment suggested that CRP contracts must be considered legally binding on both the landowner and the CCC and rental payments should be made to landowners in a timely manner as provided in the contract. Since inception, all CRP rental payments have been made, subject to statutory constraints. That should continue to be the case.

Two respondents suggested that any bases being protected should not be released because it would only reduce farm program payments. This recommendation will not be adopted. Once the CRP contract expires there is no authority to protect allotments or quotas in accordance with the 1985 Act. The eligibility of current holders of CRP contracts to participate in the production flexibility contracts authorized by the 1996 Act is statutory. However, CRP acreage that is reenrolled will be considered to be under a new contract and will lose any ''base'' protection for production flexibility contracts that otherwise applied since such bases were terminated by the 1996 Act. If a farm with tobacco quotas or allotments or peanut quotas is enrolled in the CRP, such allotments and quotas must be reduced but will be restored in accordance with the statutory provisions in effect when the CRP contract is terminated.

Two comments suggest the quota for peanuts or tobacco on land being enrolled in CRP should not be reduced. This recommendation will not be adopted because the reduction is required by 1985 Act.

§ 1410.22 Conservation plan.

One comment suggested wildlife habitat creation be included as a requirement in the conservation plan. Another comment suggested that FSA and NRCS, in conjunction with wildlife managers, work to ensure that partial field practices also provide habitat benefits for wildlife. This recommendation will not be adopted. It would be inappropriate to require wildlife provisions if the purpose of the practice is not wildlife.

One comment suggested that the local weed control representatives be requested to participate in developing a plan for evaluating noxious weed control on contracts requesting extension and for assuring adequate noxious weed control on active contracts. Participants are required to control noxious and other weeds to protect the cover and the conservation plan will include any control techniques. CCC relies on local weed officials to enforce State laws regarding the existence of any noxious weeds on CRP acreage.

Three comments opposed the requirement that landowners control all weeds, insects, and pests because some weeds being controlled in most cases offer the highest wildlife values and places unnecessary constraints on program participants. This requirement applies only when the approved cover has been damaged by the existence of weeds, insects, or pests.

One comment suggested that contracts allow for spot mowing and spot treatment of weeds. Procedure will

encourage this provision where technically appropriate. However, disturbance of the cover will not be permitted during the primary nesting period.

Five comments supported NRCS supervision to create firebreaks with light tillage on CRP land and would like the issue addressed in the regulations. This recommendation will not be adopted. However, firebreaks are allowed on CRP acreage when required by State and local units of government to include barren firebreaks where erosion is not a hazard and documented in the conservation plan.

One comment suggested that in order to create and enhance wildlife habitat, pine plantations and fescue monocultures should be eligible for reenrollment only if they are improved substantially for wildlife through habitat diversification. This recommendation will not be adopted as the indexing system will allow for taking those factors into account, along with others, to maximize achievement of the program's objectives. However, improving cover for the benefit of wildlife will enhance the likelihood of acceptance in the program.

Regarding native plant species, five comments suggested that native plant species be required for cover plantings. Two comments suggested the use of seeds on CRP land represent the type of vegetative communities native to that area. Three comments suggested that a stronger emphasis be placed on diversifying cover plantings on CRP contracts to include native species where applicable. One comment suggested that the regulations should provide, generally, that land cover should use vegetation native to the region and include as diverse a mixture as is environmentally valuable and cost effective. Two comments suggested that eligible practices should state a clear preference for establishing native species of grasses, legumes, shrubs, and trees and to the extent practicable, landowners should be encouraged to plant locally derived plant materials. Two comments suggested that the regulations require the use of native warm season grasses on lands enrolled CRP where grassland is the desired cover type.

The CRP has multiple purposes and it is a voluntary program. A producer selects the practices most desirable for his or her farming operation. If the producer's objective requires an introduced species, it would be inappropriate and inefficient for CCC to require that a native species be used.

One respondent suggested that § 1410.22(b) should be amended to replace ''or'' with ''and'' when listing the purposes of the practices to be included in the conservation plan. Conservation plans are drafted according to the primary purpose of the practice. To modify such a plan to include all objectives may unnecessarily compromise the environmental benefits to be obtained.

One comment suggested the choice of the species to be planted should be an option of the landowner and professional forester as determined by both to be best suitable for the site and the owner objectives. Flexibility on this issue reflects current CCC policy. However, species will be considered when evaluating offers.

One comment suggested the local NRCS offices have the flexibility to develop grass roots maintenance plans that would achieve the overall CRP objectives, which would include determining stocking rates and time of implementation based on local conditions, climate and topography. The conservation plan is written to include appropriate maintenance provisions. Therefore, this recommendation will not be adopted.

Eight comments suggested that the conservation plan should allow landowners to irrigate crops from water cover located on the CRP acres with an appropriate reduction in the rental rate. Generally, acreage accepted with water as an approved cover was done so for water quality and wildlife purposes. To drain such acreage for crop production could adversely impact the land directly counter to the purposes for which the acreage was accepted. Further, such activities could be destructive to the cover and do not appear to be needed or cost-effective.

One comment suggested that the conservation plan should allow appropriate maintenance of permanent cover and should not have required management of anything other than CRP contract acreage unless the producer requests a more comprehensive plan. The CRP conservation plan does make allowance for the appropriate maintenance for only the cover.

One comment opposed eliminating the minimum widths for the strip practices and suggests, in all cases, the area of the strips should be computer based on the average width, not the minimum. Other comments suggested a minimum width. The Conference Report accompanying the 1996 Act suggested that, to the extent practicable, that local conditions should be considered when determining minimum required widths for vegetative strips in CRP. Further, complaints were received from the public that previous regulations were not flexible to meet the needs of intended CRP sites in all States. Accordingly, it has been determined that decisions on these size requirements will be made at the local level.

One comment suggested that the conservation plan should take into account any abnormal weather patterns and should the cover fail through no fault of the contract holder, NRCS should work with the producer in order to assure that the cover is replaced in the most cost-efficient manner. It is unclear how a technician can develop a plan for abnormal weather patterns. However, NRCS will work closely with a participant in such circumstances. Similarly, USDA will work with landowners so that all options for land use and Federal and State assistance are known.

One comment suggested that NRCS cooperate with producers who put land back into production and organizations or agencies cooperating in the funding of the program must diligently respect private property rights. The Conference Report accompanying the 1996 Act suggested that lands exiting the CRP under the early termination provisions of the 1985 Act not be held to a higher conservation compliance standard than similar cropland in the area. NRCS will work with a landowner in providing technical assistance on potential conservation compliance problems and to provide an appropriate conservation plan.

Several comments suggested that silvaculture thinning from 8 to 10 years of age and subsequently every 3 to 5 years thereafter until final harvest be allowed with a reduced payment during the years of commercial activity. The final rule has been amended in § 1410.21 to provide for normal forestry maintenance activities consistent with the 1985 Act.

One comment suggested that filter strips and riparian buffers should be allowed to be contracted anywhere determined necessary, not just along permanent streams and that minimum widths for all the strip practices not be eliminated with ephemeral waterways allowed to flow through the middle of the strip. This recommendation did not reflect the 1985 Act limitations on eligible land such as the enrollment of cropland and marginal pasture lands. Accordingly, this comment can not been adopted.

One comment suggested prioritizing between filter strips and riparian buffers when there is an adjacent water course involved. The filter strip and riparian buffer standards provides the needed flexibility for NRCS to make these

eligibility determinations. Accordingly, this comment has not been adopted.

One comment suggested that fields should not be considered a qualified established stand unless a majority of the specified and drilled grasses are present and flourishing. This is already a requirement for practice certification.

One comment suggested that the conservation plan should allow for the addition of structures, grassed waterways, terraces, and settlement ponds on land enrolled in CRP which will be returning to production. CRP's purposes do not include preparing land for a return to production. Therefore, this recommendation has not been adopted.

Two comments suggest the terms, conditions, and requirements of CRP maintenance contracts be made known to farmers prior to commitment. The required maintenance provisions are included in the conservation plan and are reviewed and discussed with CRP participants by NRCS prior to contract approval.

§ 1410.23 Eligible practices.

One comment supported sound conservation practices such as filter strips, waterways, headlands, and riparian buffers but did not support an annual payment from CCC to maintain them. CCC provides a nominal additional rental rate incentive, up to $5 per acre as part of the maximum rental rate calculation, to ensure that participants are willing to enroll land for those practices and then properly maintain them. Actual cost-share rates are set in accordance with the 1985 Act. CCC will continue to set rental rates in a way that reflects true costs and which achieve the intended environmental goals of the program. These additional incentives, because of the special nature of the contracts, are needed and warranted. Offering a lesser amount, however, enhance the ranking of the offer.

One comment suggested riparian criteria include flooded and scour areas rather than be set in terms of the number of feet from the water course. The current rule and this final rule already provide for establishing such criteria in either manner.

Three comments suggested that eligible practices include naturally occurring grasses and other covers. The rule allows for such action by CCC so no change was made from the proposed rule.

Two comments suggested that tree planting should be a priority in areas subject to scour erosion and also in riparian areas. Tree planting is a requirement in scour erosion areas. § 1410.6 provides that cropland approved for enrollment under scour erosion criteria must be planted to an appropriate tree species or mix thereof according to the FOTG, unless NRCS, in consultation with FS, determines that tree planting is not appropriate. Trees or shrubs are required for the riparian buffer practice.

One comment suggested that riparian corridors containing hardwood trees should be added to the eligible practices. The final rule has been amended to remove references to specific eligible practices.

One comment suggested that FSA, NRCS, and wildlife managers should strive to ensure whole field practices are considered. This is not precluded under the final rule.

One comment suggested the State FSA committee include the implementation of practices which will benefit successful native field habitats. The final rule allows such a priority if deemed appropriate in particular cases.

Three comments suggested that the regulations allow the use of native vegetation/natural succession on lands enrolled in CRP and cost-share periodic maintenance, for example, by light discing. Cost-share payments are made as authorized in the 1985 Act and incentives may be included in rental payments to reflect special burdens. Such incentives will be added as needed. Acreage with covers already established are permitted to be enrolled provided all other eligibility criteria are met.

One comment suggested that for lands planted to trees there be a maximum of 436 trees per acre, a minimum of 30 foot unplanted buffer of natural vegetation or wildlife plantings along the edge of fields, a minimum of 10 percent of the former agricultural field maintained in wildlife openings (includes acreage in unplanted buffer), and cost-share on seeding of up to 25 percent of the field with perennial or reseeding legumes (when site conditions are appropriate). This recommendation will not be adopted. These are specific practice requirements that are more appropriate for the FOTG.

Five comments supported a new practice for wildlife habitat. Two comments suggested forest trees be an acceptable permanent vegetative cover. There is no need to create a new practice. CRP already has two practices for wildlife habitat. Both hardwood and softwood trees are acceptable covers.

Two comments stated that the proposed rule does not adequately address prairie wildlife protection. The final rule continues the provisions for establishing grassland cover that has benefitted prairie wildlife species and resulted in habitat that has assisted in the population recovery of water fowl and other migratory bird species in the Great Plains States.

Two comments suggested the wildlife water cover restrictions placed in the 1985 Act should not apply to this section. This recommendation can not be adopted due to the provisions of the 1985 Act.

One comment suggested that annually planted wind strips be an eligible practice. The purpose of 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 resource conserving cover. Therefore, this recommendation will not be adopted.

§ 1410.30 Signup.

The comments received suggested including agricultural drainage wells, field border strips, center pivot circle corners, grassed terraces, linear grass strips, shrub plantings arranged in irregular blocks, and land currently enrolled in WBP. The practices eligible for continuous signup may be implemented on field borders and center pivot corners if such land is determined eligible and suitable for the intended practice. As to the other suggestions, their adoption would not be cost-effective uses of the CRP. The land and practices eligible for continuous signup generally provide benefits to large areas when compared to the acreage on which the practice is implemented.

One comment suggested all lands USDA intends to be eligible for the continuous enrollment process should be listed in the regulations. Specific practice eligibility determinations will not be included in the regulations so as to provide the needed flexibility to be able to modify the available practices to respond to agricultural, environmental, and economical changes. Therefore, this suggestion is not being adopted.

Twenty-seven comments supported the new continuous signup implemented in 1996.

Several comments were received regarding the CRP enrollment period. Two comments suggest the State FSA committee establish the enrollment period and one comment suggests a constant annual enrollment period be established through 2002. The CRP acreage limitation is a national limitation allowing CCC the discretionary authority to determine the

maximum acreage level up to 36.4 million acres. The desired maximum acreage limit determines when enrollment periods are announced considering the number of acres currently enrolled and the schedule for acres exiting the program. The maximum acreage level at any time can be dependent upon market conditions, farm financial conditions, and national and local environmental concerns that must be evaluated nationally, with other factors. A rigid schedule would unduly limit CCC's options and would not allow adjustments to changed circumstances.

One comment suggested participants be allowed to choose any year to be the effective year of the contract. To allow producers to pick any effective year for the contract prevents from CCC maintaining current acreage levels. However, producers, who enroll acreage under the continuous signup provisions, choose when to enroll acreage and are permitted to defer the effective date of the contract for up to six months.

Several comments suggested the strip practices, ''contour grass strips'' and ''wildlife corridors'' be made eligible for immediate enrollment under the continuous signup provisions. Like the permanent wildlife habitat practice, wildlife corridors are eligible for the continuous sign-up when located in wellhead protection areas. Contour grass strips are eligible. The rule, however, will continue to allow complete flexibility for CCC on determining which practices are chosen for continuous signup.

One comment suggested there should be no discrimination against smaller acre bids when they provide big benefits. CCC recognizes the value of certain practices which generally enroll small acres in providing significant benefits by allowing otherwise eligible offers for these practices to be enrolled without further evaluation.

§ 1410.31 Acceptability of offers.

General

Four comments suggested that the ranking structure was one of few Federal programs that ''helps our citizens and wildlife.'' Two comments suggested that expiring contracts not be allowed any advantage in subsequent enrollment. Each offer will be evaluated on its own merits. Existing CRP offers that will use current covers will have reduced costs and would have, in that sense, some advantage.

Another comment suggested that the bidding process should be replaced with a set amount of $25.00 to $35.00 per acre. The report accompanying the 1997 Appropriations Act reaffirmed previous Congressional direction that CRP rates should not exceed the prevailing rental rates for comparable land in the local area. Establishing arbitrary values would be inconsistent with this directive.

Four comments requested an opportunity to review and comment on the ranking process. The ranking process, as set forth in the proposed rule, was developed by an interagency task force consisting of several USDA Agencies, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The ranking process, moreover, is not a rigid schedule but may be adjusted depending on the progress of the enrollments, or changed priorities. Interested parties have been, and may continue, to make their views on priorities known.

Another comment suggested that more of the matters now set forth in technical manuals should be incorporated into the proposed rule. This is not a CRP rule issue. Section 343 of the 1996 Act requires that any future revisions to NRCS technical guides be made available for public notice and comment.

Process

Nine comments suggested that producers currently enrolled in the CRP should not be required to rebid if their land qualifies for enrollment. The comment was not clear on the basis on why existing acreage should be considered differently from acreage seeking enrollment for the first time. Requiring all expiring CRP acreage to be rebid will allow CCC to treat all eligible owners and operators on the same basis. Accordingly, this recommendation will not be accepted.

Fourteen comments suggested that clear guidelines for acceptance be published in advance to make the approval process observable and more predictable. CCC intends to continue its efforts ensuring that the public is fully informed and will make available programmatic information prior to enrollment. CCC also intends an element of competition between bids to increase the cost-effectiveness of the program.

Five comments suggested the conservation priority areas be taken out of the eligibility criteria and placed in the ranking process. The conservation priority areas allow acreage that does not meet the regular eligibility criteria but that meets some other identified environmental need to be offered for the program but to ensure maximum environmental benefits the offered acreage will compete with other acreage being offered. The ranking process contains credit for being located in a conservation priority area to account for the cumulative environmental benefit that accrues within the CPA.

One comment supported the use of a ranking process that does not favor one habitat or environmental factor. However, the commenter also suggested some kind of additional consideration be given for a number of categories of acreage predominantly related to current CRP contracts. The ranking process contains credit for acreage where the appropriate cover is already established. Other comments suggested that additional credit be given for State and federal endangered, threatened, or candidate species. This comment was adopted.

One comment opposes the proposed rule's emphasis on tree plantings. However, the 1985 Act establishes, as a goal, not less than one-eighth of the land enrolled during 1991 through 2002 being established to trees and other specified covers. The ranking process will contain criteria that will encourage tree planting and other practices that have long-term retention after the contract expires.

One comment suggested the rule concentrate more on water quality than air quality. The overlapping nature of the natural resource factors yields multiple benefits that can rarely be accorded to one factor. For example, substantial air quality benefits have been obtained in the Great Plains States for land which was enrolled under earlier soil erosion criteria. The commenter also suggested the EI of 8 will overlook land that yields substantial benefits while it may have an EI of less than 8. The standard used to define highly erodible land provides a rational break for enrollment. Land with an EI of less than 8 which provides identified environmental benefits may be eligible under the conservation priority area authorized under § 1410.8. The ranking process will contain criteria that includes both water and air quality along with other factors. Lands with an EI less than 8 that contribute to air quality problems could be recommended as a conservation priority area.

Three comments suggested that land offered within national and State conservation priority areas should receive consideration in the ranking process. This comment was adopted.

Ranking Plans

One comment suggested the bid against each other process be eliminated and that the local FSA offices have the control of the selection of suitable CRP

land. This recommendation did not alternatively describe how the maximum environmental benefits could be obtained under the recommended scenario and will not be adopted.

A number of comments suggested that FSA work with State and local resource professionals. State FSA committees, in consultation with State Technical Committees will be afforded an opportunity prior to signup to develop a State ranking plan consistent with stated broad natural resource goals. Members of the State Technical Committees include Federal and State resource professionals and others.

One commenter suggested that the State Technical Committee, not CCC, should establish ranking factors, conservation priority areas, and priority purposes. However, the statutory mandate for State Technical Committees limits its authority to recommendations.

Natural Resource Factors

There were a number of comments suggesting that land under contract should be afforded some special status. Provided an appropriate cover is established, the ranking process will make an allowance because of the reduced establishment cost. However, it would be inappropriate and unduly complex to establish separate types of acreage to be evaluated for enrollment.

Another comment suggested that the natural resource factors should be feasible for all geographical regions. Enhancement of wildlife habitat, water quality, and air quality; reduction of erosion, and benefits from establishing longer term practices are goals applicable throughout the country. The ranking process incorporates all of these natural resource factors.

Other comments suggested that priority be given to acres that are within several miles of lakes, rivers, marshes, woody areas, greatest acreage of wetlands, to large blocks of land, and to upland acreage near wetlands. The ranking process will consider similar factors. The ranking process will consider areas within proximity of protected acreage. CRP in proximity to lakes, rivers, and marshes will also be considered.

Two comments suggested the ranking process needs to give better recognition and greater benefits to restoration of native vegetation or prairies and to mixed species of trees. The ranking process will take into account these comments.

One comment suggested that the playa basins be given a high ranking. Restoration of wetlands or land adjacent to playa basins will be considered in the ranking process.

One comment suggests that CRP eligibility should be designed to fit into all agricultural ecosystems and not be based solely on erosion index factors or designated conservation priority areas. The ranking process is designed to be a broad natural resource based formula to assist CCC in ranking offers.

Seventeen comments suggested that the final rule should include language that recognizes wildlife habitat as a co-objective of CRP and lands should be ranked based on wildlife objectives. § 1410.3 lists wildlife habitat as one of the objectives of CRP.

Comments relating to specific factors follow.

Wildlife Habitat Benefits

Eleven comments suggested that the final rule exclude wildlife habitat benefits from being considered as a separate criteria. Since CRP can prevent decline of wildlife populations thus avoiding the listing of a species under the Endangered Species Act and enhancing the recovery of an already listed species, CCC considers wildlife an appropriate factor. Other comments suggested that additional emphasis be placed on the enrollment of wildlife habitat benefits including higher priority, larger tracts, or requiring wildlife improvements. Vast improvements in the recovery of various wildlife have been attributed to CRP and will continue to be an integral part of CRP's purpose with reduction of soil erosion and improvement in water quality. CRP provides significant environmental and economic benefits through the enhancement of wildlife habitat.

Other comments suggested that consideration be given to large contiguous blocks of land. The relative size of acreage offered for CRP is considered during the ranking process. In general, for most terrestrial and bird species, large blocks of land are more valuable for wildlife.

Water Quality Benefits

One comment recommended the ranking process incorporate water conservation benefits. To the extent that improved water quality includes the conservation of water resources, this recommendation was adopted. It is otherwise unclear how an assurance can be obtained that the conserved water would not be devoted to other uses.

Two comments suggest that ''drinking water quality'' should be specifically mentioned as one of the factors for prioritizing offers. ''Drinking water quality'' is an inherent subset of the water quality factor.

Reduced Erosion

One comment suggested that soil erosion be changed to soil loss. The commenter did not make clear the basis upon which the comment was offered. Accordingly, the comment was not adopted.

Another comment suggested that enrollment priority be given to land that cannot be farmed under a conservation plan without using alternative conservation systems. There is a direct connection between the amount of credit awarded under the ranking process and the EI of the acreage offered which is consistent with the suggestion.

Likely Long-Term Benefits

Two comments recommended the elimination of tree planting and one of those comments recommended creating a prairie restoration practice and the establishment of native grasses will continue to be permitted in CRP.

Another comment suggested that grassland establishment rather than tree planting be a priority. The 1985 Act, however, establishes tree planting as a goal of the program. Accordingly, this recommendation will not be adopted.

Another comment suggested there was a ''penalty'' for the Great Plains associated with tree planting. However, there was no ''penalty'' or other reduction applicable to the Great Plains or any other geographic area proposed except that, of course, the cost of tree planting can differ in different regions and those costs must be taken into account.

Air Quality Benefits

Two comments suggested that wind erosion should be considered more heavily. A new natural resource factor for air quality was added to reflect the benefits from reduced wind erosion.

Cost Factor

A number of comments suggested a cost bonus factor that takes into account the reduced expenditures necessary on lands already in CRP with established cover. This comment was adopted.

One comment suggested not considering the rental rates in the next CRP signup. However, rental rates are key to the cost-effectiveness of the program. Therefore, this suggestion can not be adopted.

Five comments suggested that the renewal of present contracts should be considered first for re-enrollment because there would not be any cost-share expense for seeding. Because the goal of the CRP is to achieve specified conservation benefits, CCC does not believe it appropriate to consider a differentiation in classes of acreage.

However, the ranking process will consider whether the appropriate cover has been established.

§ 1410.32 CRP contract.

There were six comments that suggested the CRP contract not be binding, be revocable before contract approval at producer election, be subject to drainage district concurrence, or not have terms to require the refund of payments or interest upon termination. All of these suggested actions would diminish the value of the contract, would be contrary to 1985 Act, and, accordingly, have not been adopted.

Another comment suggested that the ''Super Sod Buster'' provisions be eliminated from contracts enrolled since 1991 because it is not consistent with earlier enrolled contracts. This provision and limit are required by the 1985 Act.

Nine comments suggested that various contract lengths be considered, including those with five-year increments starting at ten years as a minimum and going to at least 20 or 25-years. However, 1985 Act establishes the time period as 10 to 15-years. Accordingly, this suggestion was not adopted.

One comment suggested that extensions of existing CRP contracts should be allowed for wildlife benefits if the owner should choose this option. However, as indicated in the proposed rule, Congressional directives contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contracts in FY 1997. Accordingly, this suggestion was not adopted.

One comment suggested more specific guidance regarding when production of an agricultural commodity on CRP land would be authorized. CCC is committed to the release of acreage under CRP contract only in severe circumstances, and consistent with 1985 Act. As such, it would not be appropriate to speculate as to what set of consequences would trigger the release of acreage for agricultural production.

Early Termination

Eleven comments supported the early termination provisions including those practices that are ineligible for early termination. Of those, one comment recommended a reduction in the minimum average width required to remain in CRP near a permanent water body. However, that reduction may not be environmentally appropriate in all areas of the country.

One comment suggested that filter strips may not need to be as wide as presently required. This recommendation was adopted. The appropriate width of a filter strip will be determined by referring to the applicable FOTG.

Eleven comments suggested an expansion of the early-termination list of ineligible acres to include other grass or forested areas in reducing erosion, areas of high wildlife value, areas likely to have an impact on drinking water, or within 100 feet or adjacent to any temporary, semi-permanent or permanent stream, wetland, or other water body. However, early termination was authorized by the 1996 Act amendments to the 1985 Act. It is likely that the recommendations, taken collectively, would result in substantial acreage made ineligible for early termination, which is not consistent with the purpose of the early termination provision as authorized by the 1985 Act.

Two comments were not supportive of either the early termination proposal generally or the exemption of certain practices. However, the allowance, its limits, and the exemption of the particular practices mentioned, are all statutory.

§ 1410.33 Contract modifications.

The majority of comments received on this section pertained to contract extensions. However, the 1997 Appropriations Act effectively precluded the extension of any CRP contract in FY 1997.

One comment suggested using the expiration date of the original contract as the starting point for ten-year re-enrollments. Contracts for acreage accepted for new enrollment would not begin until the original contract expired.

Another comment suggested that CRP contracts should not be terminated when grain prices are high. The CRP still provides a reserve and CCC must maintain all of its options. Further, before any contract termination, CCC will carefully review the environmental impacts and net benefits.

§ 1410.34 Extended program protection.

Four comments suggested an extension of the existing program preservation agreement for five to ten years. The final rule reflects, consistent with the 1985 Act, that program preservation agreements will initially be effective for 5 years with an option to renew every five years. As indicated earlier, however, the importance of this provision has been changed by the change in the nature of commodity programs.

§ 1410.40 Cost-share payments.

Comments relating to cost-share payments generally involved suggestions on increasing or limiting rates, liberalizing applicability, or clarifying terminology. Four comments suggested modifying § 1410.40(g) in order to limit federal cost-share rates, in combination, to 50 percent. This comment is not adopted since except for special cases identified in the rule, the 1985 Act limits the program cost share to 50 percent. One comment suggested increasing cost-share rates for native grass establishment. Eight comments supported additional cost-sharing for wildlife habitat restoration, maintenance of plantings for wildlife corridors, eligible practices such as shallow water areas for wildlife and permanent wildlife habitat, and restoration of wetland hydrology. The 50 percent limit, as indicated, is statutory. As for rental rates, those rates can be adjusted as needed, consistent with statutory law.

Several comments suggested liberalized eligibility. Two comments suggested adding riparian buffers consisting mainly of woody plantings to the list for cost sharing of maintenance for two to four years. CCC provides a nominal amount in the annual rental payment for maintenance requirements associated with the conservation plan. Two comments suggested allowing cost-share to increase species diversity of cover plantings. Eight comments supported cost-share for replacing or restoring practices as needed to achieve adequate wildlife habitat. Cost-share for diversifying cover previously established and for replacing covers that do not become established is generally authorized. One comment suggested cost-share for fencing and water impoundment on CRP acres. This provision is available for certain practices. One comment suggested providing cost-share for prescribed burning in young longleaf pine plantings. Habitat disturbance such as fire is often an important part of the maintenance of healthy biological systems. By statute, cost-share is not available on maintenance of existing practices except in very limited cases. However, rental incentives are used as needed to encourage enrollment of these activities. One comment suggested that language should be added that State wildlife agencies and other nonprofit conservation organizations should be eligible for cost-share assistance not to exceed 100 percent of the cost. Another comment suggested that CRP land should not be excluded from the benefits of other Federal cost-share

programs. These comments raise the same statutory issue and have not been adopted.

One comment suggested allowing a three-year establishment period for softwood plantings and 50-percent cost-share for hardwood planting. A three-year establishment period for softwood planting is not necessary because the planting effectiveness for such trees is generally greater than for hardwood species. The three year allowance for hardwood trees is established by the 1985 Act and the cost-share rates are set in accordance with that Act. Another comment suggested that maintenance on tree projects should be kept to the minimum needed to establish the trees. Forest management plans stipulate maintenance needs and are not addressed by the proposed rule. One comment suggested that a maintenance allowance be included in the law to eradicate noxious weeds and that payment reductions for noncompliance should stay in the State to pay for weed control. No provisions exist in the 1985 Act for payments to States for control of noxious weeds or for specific payments for weed control in general. Rental rates, however, will provide incentives for farmers to comply with all CRP provisions.

One comment requested clarification between cost-share payments and rental incentives. A cost-share payment is required by the 1985 Act to assist participants in establishing all eligible conservation practices, and is based on actual costs at a specific site. Rental incentives are designed to encourage particular enrollments and do not, as such, involve a percentage share of particular costs incurred. With a rental incentive, any special costs will be strictly the burden of the participant.

§ 1410.41 Levels and rates for cost-share payments.

Comments on cost-share levels and rates generally recommended either limiting or increasing practice eligibility or rates made available to producers. Two comments suggest a $3,500 limit on the total cost-share available to any landowner and another suggests limiting cost-share to 50 percent regardless of the source of the cost. Rate suggestions included one comment that recommended increasing cost-share assistance to 75 percent for limited resource producers and one that recommended a 50 percent incentive payment be paid to cover all costs of wetland restoration. The 50 percent cost-share rate is statutory and the suggested $3,500 limit would unduly limit participation in the program. However, participants may receive additional funding through State or private organizations. Five comments supported the use of cost-share assistance to encourage restoration. In addition to eligible wetlands, restoration activities on other lands may also be included by CCC after carefully reviewing all environmental factors and cost.

§ 1410.42 Annual rental payments.

Ninety-seven respondents supported the proposal to base the schedule of rates that FSA will pay for different soil types within a county on the local average dryland cash rental estimate or similar concept. Of those, 12 comments suggested using a crop share or the cash equivalent rather than cash rent. Six other comments suggested basing the rental payments on the market value or sale price of the ground. One respondent stated rates in counties influenced by urban areas should be higher and another comment urged that rates be lowered so that ground will return to production.

Ninety-four respondents indicated opposition to the manner in which CRP rental rates were proposed to be established. Of those, 36 suggested that because the more erodible and fragile type soils will have a lower rental rate, they may be less likely to be bid into CRP or more likely to be removed by the producer than more productive soils. Three of the comments simply stated that the new price structure would be devastating or would not work but offered no basis for the comments or suggestion for improvements. CCC will not be constrained to using only a dryland basis in order in establishing maximum payment rates to meet program and environmental goals and requirements.

Fifty-two respondents urged that rental rates remain at the current contract rate. A few urged the same rate for five years or to use the current CRP contract rates unless the cash rental equivalent were higher. Forty-six respondents recommended that current CRP rental rates simply be reduced with suggested amounts ranging from 60 to 90 percent reduction. A few also suggested reducing payments for participants who used cover for haying and grazing or to thin tree plantings.

Several comments suggested using other methods for setting the rental payments such as using either the average county cash rental rate or the average CRP annual rental payment from signups one through 13; using a simple, valid formula for each county developed by the Economic Research Service; setting rates equivalent to the WBP rates; setting a single minimum rental rate for all soils in the State of North Dakota; using the estimated CCC program payment yield; reducing existing contract rates by 10 percent per year until optimum levels are reached; or using a five-year rolling average of an unspecified calculation. Several respondents suggested that rates be increased to provide for taxes and inflation or to take into consideration CCC production flexibility contracts, and two comments recommended local conservation districts have a role in estimating payment rates. Twenty-one respondents urged that rental payments be set at a fair rate that is high enough to keep ground in the CRP, but made no comment regarding the efficacy of the proposed method. One comment suggested that rates provide for calculations to reflect fair market values in riparian areas.

As indicated previously, the report accompanying the 1997 Appropriations Act reaffirmed previous Congressional direction that CRP contract rates should not exceed the prevailing rental rates for comparable land in the local area. Various methodologies for determining CRP payment rates equivalent to the prevailing local rental rates were reviewed by an interagency workgroup and the determination was made that the local average cash rental rate as determined by the county FSA committees, adjusted for the relative productivity of the soil, would provide the most accurate and uniform methodology. Instructions to county FSA committees for establishing the payment rates provided that in areas where share rents are most common they use the cash equivalent of share rents. Instructions further provided for taking into consideration, where necessary, hydric soils whose productivity is impacted by the presence or absence of drainage systems. The county average cash rental rate, or equivalent, as established by county FSA committees would inherently reflect distance to market and other conditions affecting rental rates in the county. The county FSA committees received recommendations from local teams.

Participants who are approved to hay and graze established long-term vegetative cover under emergency conditions in accordance with an approved conservation plan are subject to a reduction of their CRP annual payment. Similar provisions will be implemented for participants that conduct normal forestry maintenance in accordance with an approved conservation plan.

A few comments addressed the soil rental rate methodology. One

respondent recommended that a single predominant soil type be used per participant rather than multiple soil types in a field. Three comments suggested that rates on similar soil types should be the same from State to State, and another recommended that the same rates be used in a county for all producers having the same soil type. One respondent suggested allowing different soil rental rates for the same soil within the same county based on different distances to markets and other conditions. Another comment recommended adding a premium based on the erodibility index of the soil. A few comments suggested that prices be set to save the time and expense of bidding.

CRP operating procedure provides that up to three predominant soils in a field be used in determining the soil rental rate. This approach is designed to help ensure the equivalent treatment of fields having more than one soil type. Interested applicants may make offers to enroll acreage in the CRP during an announced signup period. The offers will compete for enrollment. The maximum amount that CCC will pay for an offer is determined and made known to the applicant at the time of application. Although the same soil type may occur in more than one county or State, other market factors may the soil rental rate to differ. Soil rental rates for the same soil type within the same county, however, are expected to be consistent.

Forty-one comments suggested financial incentives be provided for various purposes. The majority of comments encouraged financial incentives to promote installation of various practices considered of high environmental value. Two comments suggested the State Technical Committee should have flexibility to establish practice and incentives of the greatest value in their State. One comment strongly opposed incentives.

Based on the comments received, CCC has determined to continue to offer incentives through an increased annual rental payment for certain practices of high environmental value, including but not limited to field windbreaks, grassed waterways, filter strips, riparian buffers, and acreage located with an approved EPA wellhead protection area. Incentives and practices available will continue to be determined at the national level; eligibility and technical suitability of the appropriate practice will continue to be determined for each offer at the local level.

Several comments were received regarding other aspects of the annual rental payments. Eight comments suggested that the $50,000 payment limitation is too strict. Seven comments urged that interest be paid if payments are more than 30 days past due. Other respondents suggested that CRP payments be considered rental income for tax purposes, that the three entity rule, used in applying the payment limit, be eliminated, and that the lifetime payment limitation may limit the amount of targeted land in previous signups. Two comments recommended providing compensation to participants for practice maintenance, and one respondent suggested dividing payments for land sold at public auction according to State law.

Section 1234(f) of the 1985 Act requires the $50,000 payment limitation. CCC has implemented the provisions of the limitation consistent with the implementation of other CCC programs with similar payment limitation requirements. Provided the participant has otherwise met all requirements for payment, if the CRP payment is not issued to the participant within 30 days after the date county FSA offices receive notification to make annual rental payments, the participant may be eligible to receive interest in accordance with existing procedures. Program payments issued are reported to the Internal Revenue Service; determination of the treatment of income for tax purposes is the responsibility of the participant. Regarding the lifetime original contract limitation of $50,000, this provision would not allow farmers who had transferred land with CRP contracts to acquire new contracts if the total of the old and new payments would exceed $50,000 per year even though the farmer would currently only be receiving the new payments of under $50,000 per year. This provision was designed to avoid circumvention of the three-year ownership rule. CCC has removed this provision from the final rule because the three-year ownership rule has been modified by the 1985 Act to be a one-year ownership rule. The maintenance suggestion has been addressed earlier. For land sold at auction, CRP payments, if due, will be divided in accordance with current rules so as to allow for uniform practice. CCC payment are not subject to the requirements imposed by State law.

§ 1410.50 State enhancement program.

Seven comments supported the conservation reserve enhancement program including a detailed proposal outlining minimum requirements for eligibility. State Governments may develop conservation reserve enhancement program proposals and submit to their respective State FSA office. An ideal use of such proposals would be to address Endangered Species Act concerns; however, proposals addressing conservation and environmental objectives of the State and nation will also be considered.

Two comments suggested that the waiver of the $50,000 payment limitation be applied to private and nonprofit conservation organizations in addition to a State, a political subdivision, or agency thereof. The 1985 Act limits the waiver of the $50,000 payment limitation only for States, a political subdivision, or agency. Therefore, this recommendation can not be adopted.

One comment suggested that efforts be made to protect environmentally sensitive lands in States that are able to provide additional funds to secure longer term or permanent easements. The final rule does not preclude such a program.

One comment suggested that CCC work with States to provide cost-share assistance with respect to conservation efforts such as the control of noxious weeds on CRP land. Control of noxious weeds is already required as a condition for enrollment in CRP. Maintenance costs are the responsibility of the participant. There is no authority for the suggested additional payments.

§ 1410.51 Transfer of land.

Four comments were received concerning this section. Two comments suggested the same provisions in this section for lands acquired by Federal agencies also be applied when a State or local agency or private organization acquires a property or interest in CRP acreage with the intent of keeping it in a conservation use. Another comment suggested that consideration should be given to maintaining a contract for environmentally sensitive land even though the ownership may be transferred.

Any State or local agency or private organization participating in CRP would be subject to the provisions in this section. The special provisions for acquisitions by Federal agencies reflect that other Federal agencies cannot be contract participants and have a special opportunity for cooperation with the operating agency. With respect to the other comments, the CRP contract is an agreement with the owner or operator and does not attach any restrictions to property titles. Accordingly, once ownership transfers the new owner is not obligated to the terms and conditions of the contract unless the new owner decides to become a participant as a successor in interest.

One comment suggested that maximum flexibility be allowed for Federal, State, or local agencies or private organizations or individuals to purchase lands enrolled in CRP if it is likely that the land will remain in a cover similar to that established under the CRP. It is unclear how this comment relates to the proposed rule. Landowners who enroll acreage in CRP maintain their ownership interest. The decision to transfer ownership remains with the landowner. Particular proposals for enhancing the program through agreements with other agencies can be handled as they arise.

§ 1410.52 Violations.

Four comments were received regarding violation provisions. Three comments suggested that an explicit provision for relief in the case of a good-faith violation, similar to the HEL good-faith provisions, is appropriate. The comments also suggested the loss of all payments should only apply to those found using a scheme or device. Another comment suggests violations should result in more severe penalties to promote active annual control of all weeds.

This section conforms with the provisions of the 1985 Act. CCC may, in its discretion, reduce a demand for a refund to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

Four comments supported and 11 comments opposed the landlord/tenant provisions of the proposed rule. Of those supporting the provisions, three suggested that landowners be allowed to discharge the tenant on land with expiring CRP contract acres being rebid into the program. Of those opposing the provisions, four suggested that the removal of tenants from the CRP contract would adversely impact the local economy and one expressed concern about the lack of protection for tenants, particularly with absentee landowners. Another comment expressed concern about the operator receiving a share of the payment. None of the recommendations were adopted except with respect to the issue of tenants on farms with existing CRP contracts re-bid into the program. Tenants are required to be on new CRP contracts if the tenant has an interest in the acreage being offered for enrollment. For land which is subject of a re-bid, the tenant must also be expected to have an interest when the new contract is begun. If at some time during the life of the contract the tenant fails to maintain tenancy, under applicable State laws, the tenant can be removed from such contract. These rules attempt to strike a balance between the interests of landlords and tenants by protecting active tenants but not unnecessarily extending that protection to two full CRP periods when the relationship between the landlord and tenant has effectively ended. The new rules encourage landlords and tenants to have a firm understanding of their relationship with respect to each other with respect to the CRP for the full CRP period and allow greater flexibility in handling these situations by allowing a greater opportunity for taking the facts of a particular case into account.

One comment suggested the relationship and share of payments may be somewhat different for re-enrolled land. The comment suggests the issue be addressed very carefully and clarified in the final rule. Re-enrolled CRP acreage will be subject to a new contract. If the interest of the participants in the farming operation has changed their share of the payment on the new contract would, presumably, be different than on the expiring contract.

§ 1410.60 Scheme or device.

One comment suggested the proposed wording was too harsh and suggested that if a prima facie case can be made then payments should be made if the issue is not fully resolved by the administrative appeals process and, in emergencies, the funds should be held in escrow. The terms of the rule are intended to ensure that the integrity of the program is maintained and that language is needed. Given the severity of the prior instances involving schemes or devices to defeat the objectives of the program, CCC believes that the remedy provided for in the rule is appropriate. Holding funds in escrow is not needed and would be administratively burdensome. Therefore, this recommendation was not adopted.

§ 1410.61 Filing of false claims.

The proposed rule provided that when a false claim is filed the CRP contract may be terminated. One comment suggested a requirement that the contract be terminated. However, to do so could unnecessarily restrict CCC's options in handling special cases. Therefore, this recommendation was not adopted.

§ 1410.62 Miscellaneous.

Several comments were received regarding: requiring CRP acreage to meet conservation compliance requirements before being used for crop production; demonstration or research project areas; cropland classification with crop acreage bases remaining intact; providing incentives for contour strips to reduce wind erosion; and special mitigation provisions for emergency natural resource problems or wetland banking. The final rule has not been revised to require that CRP acreage meet conservation compliance requirements before being used for crop production. There is no statutory authority to enforce such a provision. CRP acreage meets the conservation compliance requirements while it is under contract providing the conservation plan is being followed. In addition, no substantive revisions were made regarding demonstration or research projects because paragraph (g) of this section authorizes the approval of such projects. Further, the 1996 Act eliminated crop acreage bases; therefore, for new contracts, there are no bases to preserve. However, cropland status will continue to be maintained through the CRP contract period. The final rule did not need to be revised to incorporate incentives for contour strips because § 1410.42 already allows for incentives for various practices. However, the final rule has been revised, in paragraph (h) of this section, to provide for wetland mitigation banking.

One comment suggested that in paragraph (f), with respect to cropland status, the following be inserted after the word ''classification'': ''except as provided in § 1410.34.'' It is unnecessary to add this language because acreage subject to the provisions in § 1410.34 is still governed by the terms and conditions of the contract including the cropland classification provision.

Four comments recommended practices for land coming out of CRP. CRP practices provide for long term resource conservation or protection. Land coming out of the CRP will be subject to the provisions of 7 CFR part 12. Requiring more would be contrary to the temporary term of the CRP contract and would not be cost-effective. USDA will continue its information efforts about options available under USDA and other programs regarding conserving uses.

One comment suggested that field visits be required for all CRP land that is reoffered in future signups before the acreage is accepted. This recommendation has not been adopted due to the cost-prohibitive nature of the volume of work associated with enrolling up to 24 million acres.

§ 1410.63 Permissive uses.

Thirteen comments were received for this section. Of those, one comment suggested that participants be allowed to do anything with CRP acres as long as erosion is controlled. Another suggested producers be allowed to harvest grass seed on CRP acres. These recommendations were not adopted. According to the 1985 Act, producers must agree that there will be no haying or grazing of the CRP acreage and that there be no use of the CRP acreage for commercial purposes, except under specified conditions. There are additional, but limited, allowances for the production of trees on CRP acreage. In addition, the purposes of CRP include more than just soil erosion. To only focus on one purpose may unnecessarily damage wildlife, water quality, or other important natural resource goals. Further, there is no authority to use the CRP for producers seeking an opportunity to farm.

One comment suggested the rule should encourage the injection of animal waste on CRP acres without prior approval from the county committee. This recommendation will not be adopted. County FSA committees have the responsibility to ensure that the integrity of CCC programs is maintained. The injection of animal waste could cause significant environmental damage. To ensure the objectives of the CRP are met, county FSA committees will continue monitoring activities on CRP acreage.

One comment suggested contract holders be required to participate financially if block spraying programs are implemented. The 1985 Act provides no authority to implement this suggestion. Participants are required to follow a conservation plan of operation that includes maintenance provisions for the length of the contract period. Those who fail to comply with the plan are subject to payment reductions or termination of the contract. Therefore, the final rule has not been revised to adopt this recommendation.

Several comments suggested that landowners should allow the public open access to enrolled acres for hunting. Another comment suggested hunters be required to purchase a wildlife stamp. The funds received from the sale would be used to enroll additional acreage in the program. The CRP is a contractual relationship between CCC and producers. The 1985 Act does not provide any authority for requiring public hunting on CRP acreage.

One comment suggested allowing burning as a permissive use. Burning is currently permitted in areas where NRCS determines the practice is normal, customary, needed, and in compliance with all applicable environmental rules for the CRP acreage.

Substantive Changes Compared to the Proposed Rule

Substantive changes compared to the proposed rule include:

§ 1410.2 Definitions.

The proposed rule defined Highly Erodible Land (HEL) as certain acreage enrolled in CRP before January 1, 1995, which is classified by NRCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator;

(2) Being predominantly Land Capability Classes VI, VII, or VIII;

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(i) An erodibility index equal to or greater than 8 for either wind or water erosion; and

(ii) An erosion rate greater than T.

The proposed rule defined predominantly highly erodible field as:

(1) a field in which at least 66⅔ percent of the land in such field is highly erodible; or

(2) a field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

The definitions of HEL and predominantly highly erodible field were amended in the final rule to be consistent with the definitions found in 7 CFR part 12. The Department determined to use, to the extent practicable, the same criteria for the CRP as is used for conservation compliance when determining if acreage is HEL and if a field is predominately highly erodible. Except for redefined fields, in order to avoid abuse, the change will allow land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs.

§ 1410.6 Eligible land.

§ 1410.6 was rewritten for the final rule to provide clearer, more concise provisions regarding land eligibility for the CRP. In addition, the final rule amended § 1410.6 by:

(1) removing the minimum acreage for a manageable unit requirement. Such requirements were better determined at the local level by approved local technical authorities based on the actual site;

(2) adding marginal pasture land that is suitable for use as a riparian buffer so long as it is planted to trees, as determined by NRCS. CRP could cost-effectively provide substantial water quality, erosion, wildlife, and other environmental benefits by enrolling such acreage.

(3) changing the manner in which the EI is calculated, except for redefined fields, to be consistent with the conservation compliance provisions found in 7 CFR part 12. The proposed rule required an EI of 8 or greater, calculated by using the weighted average of the EI's of Soil Map Units within a field, to determine if land was basically eligible for enrollment in the CRP. The final rule uses the same EI value of 8 or greater to determine if land is basically eligible for enrollment in the CRP; however, the EI is calculated according to the conservation compliance provisions in 7 CFR part 12 if the field has not been redefined. The change will allow most land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs. For redefined fields, the EI of 8 will continue to be calculated by using the weighted average of the EI's of Soil Map Units within the field;

(4) generally making acreage associated with noncropped wetlands, as determined by the Deputy Administrator, eligible for enrollment in the CRP if such acreage meets the cropping requirements. Such acreage provides high environmental benefits, such as erosion control, wetland protection, wildlife habitat, and water quality, and can be a cost-effective use of the CRP;

(5) changing the term ''farmed wetlands'' to ''cropped wetlands.'' The proposed rule inadvertently listed ''farmed wetlands'' as eligible for enrollment in the CRP. The final rule has been amended to correct this oversight.

(6) making eligible field margins which are incidental to the planting of crops as determined appropriate by the Deputy Administrator.

§ 1410.31 Acceptability of offers.

The final rule amended § 1410.31 to add ''air quality'' as a possible factor that may be included in the evaluation of contract offers. Air quality was not included in the proposed rule. The CRP has proven to be an efficient tool in improving the air quality throughout the nation by reducing the amount of air pollution caused by blowing dust from

cropland production. Accordingly, it has been determined that air quality is an appropriate factor to be used in the evaluation of contract offers.

§ 1410.41 Levels and rates for cost-share payments.

The final rule amends § 1410.41 to add language clarifying that participants may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law. The 1985 Act prohibits participants from receiving or retaining CRP cost-share assistance in such instances. However, other non-Federal cost-share assistance may be available.

§ 1410.42 Annual rental payments.

The proposed rule provided that CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with the provisions of § 1410.51 plus the total annual rental payments called for in the offer) exceed $50,000. This applied regardless of the current level of payments received by the participants. The final rule amends § 1410.42 to remove this provision. CCC determined that changes in the 1985 Act made this provision unnecessary. It is important to note this is does not affect the $50,000 annual payment limitation for all current payments provided for in the 1985 Act and as explained earlier.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practices and procedures, Base protection, Conservation plan, Contracts, Environmental indicators, Natural resources, and Technical assistance.

Accordingly, 7 CFR part 704 is removed and part 1410 is revised as follows:

PART 704—[REMOVED]

1. Part 704 is removed.

2. Part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

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

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA 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 which has not been taken by such committee, such as:

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

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

(d) No delegation herein to a State or county committee shall 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 the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the EI, 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 shall be determined by the Natural Resource Conservation Service (NRCS) or any other non-USDA source approved by NRCS, in accordance with the Field Office Technical Guide of NRCS or other guidelines deemed appropriate by the NRCS, except that no such determination by NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(g) State committees, with NRCS, may develop a State evaluation process to rank acreage based on State-specific goals and objectives where such an evaluation process would further the goals of CRP. Such State committees may choose between developing a State ranking system or using the national ranking system. States' ranking processes shall be developed based on recommendations from State Technical Committees, follow national guidelines, and be approved by the Deputy Administrator.

(h) CCC may consult with the Forest Service (FS), a State forestry agency, or other organization for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice or as a component of a practice.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(j) CCC may consult with the U.S. Fish and Wildlife Service (FWS) or State wildlife agencies for such assistance as

is determined necessary by CCC to implement the CRP.

(k) The regulations governing the CRP as of February 11, 1997, shall continue to be applicable to contracts in effect as of that date. The regulations set forth in this part as of February 12, 1997, shall be applicable to contracts executed on or after that date.

§ 1410.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State or alfalfa and other multi year grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan approved by the local conservation district and CCC.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Alternative perennials means woody species of plants grown on certain CRP acres, including, but not limited to shrubs, bushes, and vines.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP.

Applicant means a person who submits an offer to CCC to enter into a CRP contract.

Arid area means acreage located west of the 100th meridian that receives less than 25 inches of average annual precipitation.

Bid or 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.

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

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 areas so designated by the Deputy Administrator with actual and adverse water quality or habitat impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws and to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Contour grass strip means a vegetation area that follows the contour of the land, the width of which is determined using the appropriate FOTG and which is so designated by a conservation plan developed under this part.

Contract period means the term of the contract which shall be not less than 10, nor more than 15, years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

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

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Environmental Quality Incentives Program (EQIP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into contracts with CCC to address threats to soil, water, and related natural resources and for other purposes.

Erodibility index (EI) means the factor, as calculated by NRCS, used to determine the inherent erodibility of a soil by dividing the potential average annual rate of erosion without management for each soil by the predetermined T value for the soil.

Farmed wetlands means land defined as farmed wetlands in accordance with the provisions of part 12 of this title.

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 means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official NRCS 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, and animal resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, wildlife habitat, and energy conservation.

Filter strip means a strip or area of vegetation 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 the purpose by the applicable FOTG.

Highly erodible land (HEL) means that land determined to be HEL in accordance with the provisions of part 12 of this title.

Landlord means a person who rents or leases acreage to another person.

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

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly and a person who has life-estate in a property.

Participant means an owner or operator or tenant who has entered into a contract.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees.

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

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 NRCS standards and specifications as a part of a conservation management system.

Predominantly highly erodible field means that land defined has a predominantly highly field in accordance with the provisions of part 12 of this title.

Quota means the pounds of tobacco or peanuts or other commodity allocated to a farm for commodity support purposes or control pursuant to the terms of the Agricultural Adjustment Act of 1938, as amended.

Riparian buffer means a strip or area of vegetation of a width determined appropriate by the applicable FOTG 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 which are also intended 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.

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 Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee and NRCS, in consultation with the State Technical Committee where agricultural nonpoint source pollutants or agricultural point source pollutants contribute or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by the NRCS or FS, as appropriate, in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices, and forestry issues.

Water bank program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

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 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 farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use for a period of time of not less than 10 nor more than 15 years in return for financial and technical assistance.

(b) A conservation plan for eligible acreage must be obtained by a participant which must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan in which case NRCS may take such further action as is needed to account for lack of such review.

(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 encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order 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, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, 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, exercises a timely right of redemption from the mortgage holder in accordance with State law;

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the 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, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months prior to submission of an offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land:

(1) Must be cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 2 of the 5 most recent crop years, as determined by the Deputy Administrator, provided further that field margins which are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator.

(2) Must be marginal pasture land, as determined by the Deputy Administrator, that:

(i) Is enrolled or has recently been enrolled in the WBP provided:

(A) The acreage is in the final year of the WBP agreement or, if not in the final year of the WBP agreement and only for enrollments in the CRP for FY 1997, is acreage for which the WBP agreement expired on December 31, 1996, where the land would be considered in compliance if such agreement was still in effect, as determined by the Deputy Administrator;

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by NRCS, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(3) Must be acreage currently enrolled in the CRP provided the scheduled expiration date of the current CRP contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator, provided the acreage is otherwise eligible according to this part, as determined by the Deputy Administrator.

(b) Any land qualifying under the provisions of paragraph (a)(1) must also, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as may be determined by the Deputy Administrator, vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria to be eligible to be placed in the CRP. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by NRCS:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(2) (i) Be a field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS. In addition such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(iii) If the full field is not eligible for enrollment under this paragraph (b)(2), be that portion of the cropland between the waterbody and the inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG; or

(3) 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 so long as water quality objectives, with respect to such land, cannot be obtained under other Federal programs, including but not limited to EQIP authorized under part 1466 of this chapter; or

(4) Be devoted to certain covers, as determined by the Deputy Administrator, which are established and maintained according to the FOTG provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator; or

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

(6) Be considered HEL according to conservation compliance provisions under part 12 of this chapter; or

(7) For redefined fields, 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 field; or

(8) Be within a public wellhead protection area or in an approved Hydrologic Unit Area; or

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

(10) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator; or

(11) Be cropland which, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

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

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

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities except for eligible land under paragraph (a)(2) of this section; or

(3) Land already enrolled in the CRP unless the scheduled expiration date of the current contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract provided that such contracts must be at least 10 years and no more than a total of 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) State FSA committees, in consultation with NRCS and State Technical Committees, may submit a recommendation to the Deputy Administrator within guidelines established by the Deputy Administrator for designation of conservation priority areas. Such recommendations should contain clearly defined conservation and environmental objectives and analysis of how CRP can cost-effectively address such objectives. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. Generally, the total acreage of conservation priority areas, in aggregate, shall not total more than 10 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by Deputy Administrator.

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

(d) Conservation priority area designations shall expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, special emphasis will be placed on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for currently listed threatened and endangered species or to prevent other species from becoming threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.10;

(2) Agricultural commodities are planted in accordance with a prior, site-specific and NRCS approved conservation plan in close proximity to such hardwood trees; and

(3) The owner and operator of such land agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and, in the case of any contract modified to change from another cover crop, the total annual rental payments over the term of any such contract may not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to the FOTG and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.10 Conversion to trees.

An owner or operator who has entered into a contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which is devoted to permanent vegetative cover, from such cover to hardwood trees (including alley cropping and riparian buffers limited to hardwood trees where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must agree to maintain such plantings for a time period established by the Deputy Administrator.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid with respect to such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.11 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the

day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or any applicable incentive payments need not be required unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been previously provided specifically for wetland restoration on the proposed restoration site. In addition to the cost-share limitation in § 1410.41 of this part, an additional one time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.12—§ 1410.19 [Reserved]

§ 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 contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control and CCC agrees to a modified plan;

(3) Establish temporary vegetative cover when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4)(i) A reduction in the aggregate total quotas and acreage allotments for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Quotas and acreage allotments reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, in accordance with the provisions of § 1410.34, an extension of such protection; and

(ii) reduce production flexibility contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part so that the total of such acres does not exceed the total cropland on the farm;

(5) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after November 28, 1990, unless such land, as determined by CCC, has a history in the most recent five-year period of producing an agricultural commodity other than forage crops;

(6) Comply with all requirements of part 12 of this title;

(7) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(8) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such 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 CRP contract period;

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

(10) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary, or may be specified in the CRP conservation plan, to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

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

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract;

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing on CRP land to the extent determined appropriate by the Deputy Administrator where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located. Such incidental gleaning shall be limited to the 7-month period in which grazing of conservation use acreage was previously allowed, as determined by CCC, in a State under the provisions of the Agricultural Act of 1949, as amended, or after the producer harvests the grain crop of the surrounding field. Further, CCC may provide approval of the incidental grazing of the CRP, but only in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(e) Provide approval of normal forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan in exchange for an applicable reduction in the annual rental payment as determined appropriate by the Deputy Administrator.

§ 1410.22 Conservation plan.

(a) The applicant shall develop and submit a conservation plan which is acceptable to NRCS and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the conservation plan, such approval by the conservation district may be waived.

(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 well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting 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 shall address the goals included in the conservation priority designation authorized under § 1410.8 of this part.

(e) All conservation plans and revisions of such plans shall be subject to the approval of CCC and NRCS.

§ 1410.23 Eligible practices.

(a) Eligible practices are those 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, forest trees, and permanent wildlife habitat;

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

(3) Accomplish other purposes of the program.

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

§ 1410.24–§ 1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit bids for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The bids shall, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits relative to cost are generated, provided the bid is not in excess of the maximum acceptable payment rate established for the for the area offered by or for the Deputy Administrator.

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

(1) Soil erosion;

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

(3) Wildlife benefits;

(4) Conservation priority area designations;

(5) Soil productivity;

(6) Conservation compliance considerations;

(7) Likelihood that enrolled land will remain in conserving uses beyond the contract period, which may be indicated by, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(8) Air quality; and

(9) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, shall be automatically accepted in the program if the:

(1) Land is eligible in accordance with the applicable provisions of § 1410.6, as determined by the Deputy Administrator;

(2) Applicant is eligible in accordance with the provisions of § 1410.5; and

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

§ 1410.32 CRP contract.

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

(b) The CRP contract will be comprised of:

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

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

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

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

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

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

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

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

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

(4) Acreage is enrolled in another State, Federal or local conservation program;

(5) The CRP practice fails after a certain time period, as determined by the Deputy Administrator, and the county committee determines the cost of restoring the practice outweighs the benefits received from the restoration;

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

(7) It is determined by CCC that such a release is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a width determined appropriate by the applicable FOTG of a perennial stream or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by NRCS;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for

CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants shall be required to meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

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

§ 1410.33 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, 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 available to the extent otherwise allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§ 1410.34 Extended program protection.

(a) In the final year of the contract, participants may, subject to the terms and conditions announced by CCC request to extend the preservation of quota and acreage allotment history for 5 years (and, if announced by CCC, in successive 5-year increments). Such approval may be given by CCC only if the participant agrees to continue for that period, but without payment, to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost-share, annual rental, or other payment shall be made.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as established by the State committee. In the event of a natural disaster, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate, retroactively, prospectively, or both, the amount of quota, and acreage allotment history otherwise preserved under the extended contract.

§ 1410.35–§ 1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made under the CRP only for the cost-effective establishment or installation of an eligible practice.

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

(d) Except as provided for under § 1410.10(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, wildlife habitat, or increased protection of public wellheads; and

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

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) CCC shall 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 establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

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

(b) The average cost of performing a practice may be determined by CCC 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, as determined by the Deputy Administrator.

(c) A one-time financial incentive, may be offered to participants who restore the hydrology of eligible wetlands in accordance with the provisions of § 1410.11(b) or other lands as determined by the Deputy Administrator; such incentives will not be greater than 25 percent of the cost of restoring such wetlands or other lands, as determined by CCC.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f) of this part, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or

otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

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

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and ''person'' determinations as they apply to payment limitations under this part.

(d) In the case of a contract succession, annual rental payments shall 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 shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be based on the actual days of ownership of the property.

(e) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be posted in the local FSA office. As determined by the Deputy Administrator, the schedule shall indicate, when appropriate, that:

(1) Contracts offered by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts that are expected to provide especially high environmental benefits, as determined by the Deputy Administrator, may be accepted without further evaluation when the requested rental rate is less than or equal to the corresponding soil schedule; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(f) Additional financial incentives may be provided to producers offering contracts expected to provide especially high environmental benefits through an increased annual rental payment or incentive payment as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44–§ 1410.49 [Reserved]

§ 1410.50 State enhancement program.

(a) For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof which has been approved for that purpose by CCC.

(b) CCC may enter into other agreements in accordance with terms deemed appropriate by CCC, with States to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) 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, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant.

(3) If the new owner or operator becomes a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the participant, past or present, who established the practice; and

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

(b) 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 contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage;

(2) Shall comply with the provisions of § 1410.32(h); and

(3) Refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the 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)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the

accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the Department, or designee thereof, shall be provided by the applicant or participant as the case may be, with access to land which is:

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

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

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

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

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

(1) Requests, in writing to be removed from the CRP contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

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

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall 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.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such 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 person seeking participation may appeal or request reconsideration of an adverse determination rendered with regard to such participation in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS concerning land classification, erosion rates, water quality ratings or other technical determinations may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

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

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance 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 this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, with respect to such land, and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the 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 which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or 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 payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made

under this part may be withheld to the extent provided for in part 12 of this title.

(c) Any remedies permitted CCC under this part shall 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; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations which shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, 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 shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Crop insurance purchase requirements in part 1405 of this chapter apply to contracts executed in accordance with this part.

(f) Land enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

(g) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity.

(h) CCC may enter into other agreements, as approved by the Deputy Administrator, to use the CRP to meet authorized wetland mitigation banking pilot projects.

§ 1410.63 Permissive uses.

Unless otherwise specified by the Deputy Administrator, no crops of any kind may be planted or harvested from designated CRP acreage during the contract period.

§ 1410.64 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under provisions 44 U.S.C. Chapter 35 and OMB number 0560–0125 has been assigned.

Signed at Washington, DC, on February 11, 1997.

Grant Buntrock,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

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