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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560-AH80

Conservation Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) amends the Conservation Reserve Program (CRP) regulations to update the terms and conditions of enrolling acreage in CRP and other eligibility requirements to implement certain provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage from the production of agricultural commodities to a long-term vegetative cover.

DATES: *Effective Date:* This rule is effective June 29, 2009.

Comment Date: We will consider comments that we receive by August 28, 2009.

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

- *E-Mail:*
robert.stephenson@wdc.usda.gov.
- *Fax:* 202-720-4619.
- *Mail:* CRP Interim Rule Comments, c/o PAI Consulting, 4900 Seminary Road, Suite 360, Alexandria, Virginia 22311.
- *Hand Delivery or Courier:* Deliver comments to the above address.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT:

Beverly J. Preston, CRP Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513; telephone 202-720-9563; e-mail:

beverly.preston@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotope, etc.) should contact the USDA Target Center at 202-720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule revises CRP regulations in 7 CFR part 1410 to implement certain changes to CRP as required by the 2008 Farm Bill (Pub. L. 110-246) and for other purposes. The 2008 Farm Bill, among other things, provided the authority to maintain up to 39.2 million acres in CRP for fiscal years (FY) 2008 and 2009 and, for FY 2010 through FY 2012, maintain up to 32.0 million acres in CRP.

The purpose of CRP continues to be to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting highly erodible and other environmentally sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enroll land under contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to maintain approved vegetative, tree, or other appropriate covers. That is not changing with this rule.

The 2008 Farm Bill added an additional program purpose of addressing issues raised by State, regional, and national conservation initiatives. This interim rule amends Part 1410 accordingly. Also, changes in the regulations are required to implement provisions in the 2008 Farm Bill regarding:

(1) The Farmable Wetlands Program (FWP) (a subprogram of CRP),

(2) Cost-sharing provisions to add provisions for thinning of trees to improve the condition of resources on certain enrolled land,

(3) Adjusted gross income requirements to reflect the new limits in the 2008 Farm Bill,

(4) County acreage limits,

(5) Cropping history,

(6) Eligible land,

(7) Haying and grazing,

(8) Acceptability of offers provisions to allow "local preference" as a consideration,

(9) Payment limitation, and

(10) Incentives for Indian tribes and for "beginning," "limited resource," and "socially disadvantaged" farmers and ranchers; incentives for pollinator habitat; and transition incentives for certain participants.

The provisions included in this interim rule adopt statutory requirements for three items in the foregoing list; namely those regarding: FWP, thinning of trees to improve the condition of resources, and amended adjusted gross income (provisions 1 through 3 described above). Provisions 4 through 10 listed above will be implemented in future rulemaking. (See the Environmental Evaluation section of this interim rule for additional information.) Also, this rule changes several sections to update dates, where appropriate, to be consistent with the 2008 Farm Bill. This rule also makes minor plain language changes to make the regulations more clear and concise.

Definitions and General Changes

This rule amends section 1410.1, Administration, to extend the effective dates for the regulations, as specified in the 2008 Farm Bill.

To accommodate new statutory provisions, this rule amends section 1410.2, "Definitions," to add the definition for "commercial pond-raised aquaculture facility."

The 2008 Farm Bill makes commercial pond-raised aquaculture facilities eligible for enrollment in FWP within CRP. Aquaculture is generally considered to be the production of aquatic animals and plants under controlled conditions for all or part of their lifecycle. U.S. aquaculture production is composed of the production of food fish, ornamental fish, baitfish, mollusks, crustaceans, aquatic

plants and algae, and some reptiles such as alligators and turtles. These organisms are grown in a wide variety of climates in either fresh or salt water and utilize a number of different production systems that are specific to the type of aquaculture. These systems have limits that impact the potential conservation benefit that may be achieved. Generally, open earthen freshwater food fish production systems are more suitable for restoration to wetland type ecosystems; therefore, they are more suitable to be enrolled in FWP. Accordingly, this rule adds a definition for "commercial pond-raised aquaculture facility" that makes eligible any earthen facility from which \$1,000 or more of freshwater food fish were sold or normally would have been sold during a calendar year.

This rule amends the definition of "technical assistance" to conform to the definition in the 2008 Farm Bill. This rule further amends the definition to include providing annual rental rate surveys. These surveys are required for market-based rental rates. The 2008 Farm Bill requires annual surveys of rental rates. Therefore, the revised definition includes providing annual rental rate surveys as a form of technical assistance.

In addition, this rule makes clarifying changes to the definition of "annual rental payment."

Farmable Wetlands Program

The 2008 Farm Bill expanded the eligibility criteria for FWP. Therefore, this rule amends section 1410.11, "Farmable Wetlands Program," to reflect the changes. This rule expands eligibility to include certain constructed wetlands that are to be developed to provide nitrogen removal in row-crop agriculture drainage areas, land that is devoted to commercial pond-raised aquaculture, and land subject to the natural overflow of a prairie wetland during certain years. In the current regulations, wetlands generally excluded from FWP eligibility include any wetland, or land on a floodplain, that is adjacent to a perennial riverine system. The 2008 Farm Bill removed these exclusions and also increased CCC's flexibility in determining the size of buffers to be devoted to grass or tree covers to protect the wetlands; this rule amends this section of the regulations accordingly.

The 2008 Farm Bill also modified the maximum size of any wetland enrolled in FWP from 10 to 40 contiguous acres (except for "aquaculture" ponds) and added limits on the amount of land enrolled for constructed wetlands of 40 contiguous acres and of flooded

farmland of 20 contiguous acres. Further, the 2008 Farm Bill removed a provision that limited payment to no more than five acres per tract. Land formerly devoted to aquaculture has no size limitations other than those required by technical guidelines. The 2008 Farm Bill also provides for a history requirement applicable for commercial pond-raised aquaculture land, specifically that such land must have been devoted to commercial pond-raised aquaculture in any year between calendar years 2002 through 2007, and for land subject to the natural overflow of a prairie wetland 3 of 10 years after January 1, 1990, and before December 31, 2002. This rule amends section 1410.11 to reflect these changes.

Acreage will continue to be limited to 100,000 acres in any one state.

Obligations of Participants

The 2008 Farm Bill made a technical change, which conforms to long-standing practice, to require CRP participants to undertake management on the land as needed to implement the accompanying conservation plan. This rule amends section 1410.22, CRP Conservation Plan, to add this requirement for management activities. CRP participants will need to implement a conservation plan providing for management of the land in addition to, for example, reducing erosion, improving water quality, protecting wildlife or wetlands, or protecting a public well head.

Cost-Share Payments—Thinning

The 2008 Farm Bill added authority to make cost-share payments to conduct thinning of trees that is necessary to improve the condition of resources on the land, such as wildlife habitat. Therefore, this rule amends the regulations in section 1410.40, Cost-share Payments, to add a new paragraph (g) to provide that a cost-share rate of up to 50 percent is authorized for the reasonable and necessary costs for thinning.

Payment Limitation and Adjusted Gross Income

The interim rule titled "Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years," published in the **Federal Register** on December 29, 2008 (73 FR 79267–79284) and made effective on December 23, 2008, among other things, implemented the revised payment limitations and average adjusted gross income limitation for conservation programs. The revised limits are those specified in the 2008 Farm Bill. The

payment limitations interim rule implemented the payment limitations in 7 CFR part 1400 and the average adjusted gross income limitations in 7 CFR part 1400 subpart F.

The 2008 Farm Bill amends the payment limitation and average adjusted gross income provisions, effective for contracts signed for FY 2009. Prior to the implementation of both this interim rule and the payment limits interim rule, the \$50,000 limitation on annual rental payments had been applied to a "person" as previously defined by statute and determined in accordance with the existing regulations at that time. The regulations prior to the payment limits interim rule provided for the "3-entity rule" that allowed a "person" to receive payment indirectly through no more than 3 entities, if payment was not received directly, and through no more than 2 entities if payment was received directly. Although under the 2008 Farm Bill and the current regulations the payment limitation on annual rental payments under CRP remains at \$50,000, the limitation is now applied by determining the amount received by each "natural person" and legal entity, directly or indirectly. The 3-entity rule was eliminated in the 2008 Farm Bill and removed from the regulations by the payment limits interim rule.

As specified in 7 CFR 1400.500(d), for 2009 through 2012 conservation programs specified in 7 CFR 1400.1, a person or legal entity that has an average adjusted gross nonfarm income that exceeds \$1,000,000 will not be eligible to receive payments or benefits under conservation and related programs, and other programs made applicable by statute or regulation, unless not less than 66.66 percent of the of the average adjusted gross income of the person or legal entity is average adjusted gross farm income.

This limitation may be waived on a case-by-case basis by the Administrator or NRCS Chief for the protection of environmentally sensitive land of special significance. Such a written waiver request must document that land within or adjacent to the producer's agricultural operation contains critical resources such as, but not limited to, threatened, endangered, or at-risk species; historical or cultural resources; unique wetlands; or critical groundwater recharge areas. In addition, the waiver request must either:

- Show that use of conservation program funding by an individual producer is critical to the success of a project that benefits multiple producers in a community, watershed, or other geographic area or

- Show that conservation program funding will achieve enduring conservation treatment through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land.

This rule modifies the regulations in sections 1410.42, “Annual Rental Payments” (to specify payment limitations) and 1410.44, “Adjusted Gross Income,” to be consistent with the 2008 Farm Bill and the payment limitation regulations in 7 CFR part 1400. However, these changes to reflect new provisions in the 2008 Farm Bill are effective only for FY 2009 and later contracts—that is, contracts executed after October 1, 2008. For contracts executed before that date, the regulations in the January 1, 2008 edition of the *Code of Federal Regulations* apply. That is, the rules in place when the contracts were executed will apply on questions of payment limits and adjusted gross income limits on eligibility.

Request for Comments

The authorized purpose and scope of CRP has changed over time. Since CRP was originally enacted by the 1985 Farm Bill, there has been an evolution of the types and kinds of land enrolled. Initially, a substantial amount of land was enrolled which primarily met commodity supply goals. By the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127, commonly known as the 1996 Farm Bill), increased focus was placed on environmental goals including the continuous signup of relatively small acreages that protected much larger acreages and included land devoted to

buffers, filter strips, and grass waterways.

After the passage of the 1996 Farm Bill, CCC, in addition to more customary enrollments, collaborated with the State governments and leveraged Federal and State resources to target environmental priorities of the State and the Nation. Since the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill), further attention has been devoted to enrollment of land for the benefit of quail and other upland birds, certain wetlands, ducks, other high priority wildlife species identified by states, and longleaf pine restoration.

Under the 2008 Farm Bill, the overall CRP enrollment authority was reduced from 39.2 million acres to, by FY 2010, 32.0 million acres, which provides an opportunity to further refine and re-direct program resources.

We request comments on detailed environmental and other needs and goals on which CRP resources should be focused or targeted to optimize environmental benefits consistent with program goals and purposes.

As CRP’s purpose and goals have changed over time, it is possible that unintended barriers to enrollment may exist. Therefore, we also request comments on any barriers to enrollment (outside of statutory provisions) and what steps should CCC take to remove such barriers to enrollment or to streamline program participation within the CRP consistent with the statutory objectives of the program.

Executive Order 12866

This rule has been determined to be economically significant and was

reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

Cost Benefit Analysis

The 2008 Farm Bill extends CRP enrollment authority through September 30, 2012, and requires that enrollment be reduced to no more than 32 million acres beginning October 1, 2009. While the 2008 Farm Bill authorizes additional changes, this interim rule only addresses certain provisions, including: (1) Changes to Farmable Wetland Pilot Program eligibility criteria; (2) provision of 50-percent cost-share for tree thinning activities; and (3) implementation of new payment limitation applicability and new adjusted gross income-based eligibility criteria. Table 1 provides additional details on the 2008 Farm Bill changes covered by this interim rule. Other changes that involve discretionary authority will be covered in a separate rule and cost benefit analysis.

The provisions implemented by this interim rule are statutorily-mandated, meaning the no-action alternatives are not feasible, and are used only to demonstrate impacts of the new or revised provisions. The alternatives are:

- Implement payment limit and AGI-based eligibility provisions or not,
- Implement cost-sharing for tree thinning or not, or
- Implement revised Farmable Wetlands Program eligibility criteria or not.

TABLE 1—CHANGES TO CRP COVERED BY THE INTERIM RULE

Provision	2002 Farm Bill	2008 Farm Bill	Comment
Conservation Reserve Program			
Payment Limits	\$50,000 per year per person	\$50,000 per year per person or legal entity.	The 2008 Farm Bill repeals “3-entity” rule and requires direct attribution. (Provision assessed in separate CBA on payment limits and AGI-based eligibility.)
AGI-Based Eligibility	3-year average AGI must not exceed \$2.5 million.	3-year average AGI must not exceed \$1 million. No limit if 2/3rds from farm income.	Waivers allowed on case-by-case basis. (Impacts discussed in the separate payment limits CBA.)
Cost-share for Tree Thinning	No provision	Authorizes 50-percent cost-share for thinning activities.	Allows up to \$100 million through 2012.
Farmable Wetland Program			
Maximum Enrollment	1 million acres	No change	

TABLE 1—CHANGES TO CRP COVERED BY THE INTERIM RULE—Continued

Provision	2002 Farm Bill	2008 Farm Bill	Comment
Eligibility	Small non-floodplain wetlands and associated buffers.	Adds floodplain wetlands, constructed wetlands, former aquaculture lands, and flooded formerly farmed wetlands.	Also adds buffers to each category. Some categories are already eligible under other CRP (non-FWP) authority. Flooded farmlands limited to lands subject to natural overflow of prairie wetland.
Wetland Size Limits	10 acres per wetland, 40 acres of wetland plus buffer per tract.	40-acre-limit per floodplain and non-floodplain wetland, and constructed wetland. 20-acre limit on flooded prairie land. No limit on former aquaculture ponds.	Applies only to wetland portion, not buffer.
Buffer Size	The greater of: 3 times the size of the wetland or 150 feet on either side of the wetland.	As determined appropriate and needed by the Secretary in consultation with State Technical Committee.	Applies to all eligibility categories.
Cropping History	3 of 10 years prior to enrollment ..	No cropping requirement for aquaculture ponds or constructed wetlands; 3 of 10 years between 1990 and 2002 for flooded farmland.	For floodplain and non-floodplain wetlands, 3 of 10 years prior to enrollment (no change).
Payment Criteria	Only 5 acres per wetland eligible for payment. All buffers eligible.	All wetland and buffer acres eligible for payment.	All acres receive same incentive payments as filter strips under continuous CRP.

Based on estimates concerning the amount of land that will be eligible, assumed participation rates and annual enrollment, and estimated per-acre costs, the costs of implementing the

changes considered in the interim rule are estimated to total \$79.6 million through FY 2012 and \$191.2 million through FY 2018. This averages to \$19.1 million per year over 10 years. The

estimated costs of the changes made by the 2008 Farm Bill and implemented in this rule are provided in table 2:

TABLE 2—ESTIMATED COSTS OF CRP CHANGES IN THIS RULE
[\$1,000,000]

	FY 2009–2012	FY 2013–2018	FY 2009–2018
Tree Thinning	\$43.8	\$16.7	\$60.5
Aquaculture Ponds	7.6	22.6	30.2
Flooded Farmland	17.9	40.7	58.6
Constructed Wetlands	10.3	31.6	41.9
Total	79.6	111.6	191.2

The extent of environmental benefits derived from this rule depends on participation rates and the specific conservation measures adopted. For example, tree thinning has the potential to enhance wildlife habitat, provide for carbon sequestration, and reduce the risk of wildfires. Enrollment of aquaculture ponds and flooded farmland and associated buffers can increase migratory waterfowl and other wildlife species populations, and potentially reduce flood damage, protect water quality, and provide for carbon sequestration. Constructed wetlands and buffers can reduce nitrate loadings, reduce down-stream flood damages, and increase wildlife habitat.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not

applicable to this interim 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. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Evaluation

In 2003, FSA finalized a Programmatic Environmental Impact Statement (PEIS) for the reauthorization of the CRP in Title II of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and published a Record of Decision (ROD). Consistent with provisions in 40 CFR 1508.28, in order to focus primarily on the issues relevant to this specific rule and not duplicate material found in the 2003

EIS, FSA tiered a Programmatic Environmental Assessment (PEA) on select provisions of the 2008 Farm Bill for CRP to the 2003 PEIS; tiering is appropriate when the sequence of analysis is lesser in scope than the initial programmatic statement.

The PEA incorporated by reference general discussions and analysis from the 2003 PEIS to assess potential environmental impacts associated with implementation of only those non-discretionary provisions identified in this rule for CRP consistent with the 2008 Farm Bill. The Final PEA and Finding of No Significant Impact (FONSI) for this interim rule were published in the **Federal Register** on December 16, 2008 (73 FR 76331–76332) for public review and comment. The proposed changes analyzed in the PEA are separate and distinct from the

proposals for discretionary changes. For those 2008 Farm Bill changes not examined in the PEA where discretion may be exercised, FSA is currently developing a Supplemental Environmental Impact Statement (SEIS) to the 2003 Programmatic Environmental Impact Statement (PEIS) on CRP before any discretionary program changes are implemented. The implementation of the discretionary changes to CRP required by the 2008 Farm Bill will be made in future rulemaking in conjunction with the planned SEIS. In accordance with 40 CFR 1501.7, a Notice of Intent (NOI) will be published in the **Federal Register** to determine the scope and notify the public.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) before any judicial action may be brought concerning this rule, appeal rights afforded program participants in 7 CFR parts 11, 624, and 780 must be exhausted.

Unfunded Mandates

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

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic

Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

Section 2904 of the 2008 Farm Bill specifies that the issuance of regulations required by Title II of the 2008 Farm Bill are to be carried out without regard to chapter 35 of title 44, U.S. Code (commonly known as the Paperwork Reduction Act). This interim rule implements sections 2101-2111 of the 2008 Farm Bill, which are in Title II. Accordingly, these provisions of section 2904 apply to this rule.

E-Government Act Compliance

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

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, (Pub. L. 104-121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Consistent with section 2904(c) of the 2008 Farm Bill, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay implementation of the program changes required by the 2008 Farm Bill. Therefore, this rule is effective on the date of its publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1410

Administrative practice and procedure, Agriculture, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, and Wildlife.

■ For the reasons explained above, amend 7 CFR part 1410 as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

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

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

■ 2. Revise § 1410.1(j) to read as follows:

§ 1410.1 Administration.

* * * * *

(j) Except as agreed by CCC and the participant together:

(1) The regulations in this part and others governing CRP as of September 30, 2008, will continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR parts 1200 to 1599 revised as of January 1, 2008); and

(2) Except as specified in paragraph (j)(1) of this section, this part will apply to all CRP contracts.

■ 3. Amend § 1410.2 as follows:

■ a. Revise the definitions in paragraph (b) for "Annual rental payment" and "Technical assistance" to read as set forth below; and

■ b. Add the definition in paragraph (b), in alphabetical order, for the term "Commercial pond-raised aquaculture facility" to read as set forth below.

§ 1410.2 Definitions.

* * * * *

(b) * * *

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in CRP, including any incentive payments that are not specifically cost-shares.

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

* * * * *

Technical assistance means assistance in regard to determining the eligibility of land and practices, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with CRP to owners or operators, as approved by CCC, includes technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and, technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

* * * * *

§ 1410.3 [Amended]

■ 4. Amend § 1410.3 in paragraph (c) by removing the words "including encouraging more permanent conservation practices and tree planting" and adding, in their place, the words "including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, such as, but not limited to, tree planting".

■ 5. Revise § 1410.11 to read to as follows:

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program (FWP) within the overall Conservation Reserve Program provided for in this part.

(b) As determined by CCC, eligible owners and operators may enroll land in FWP provided that the land:

(1) Is a wetland, including a converted wetland, as determined by CCC, that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2, in 3 of the 10 most recent crop years and that does not exceed the size limitations of this section;

(2) Is enrolled to be a constructed wetland that is to be developed to receive flow from a row crop agriculture drainage system and is designed to provide nitrogen removal in addition to other wetland functions and that does not exceed the size limitations of this section;

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

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

(c) In addition, land may be enrolled in FWP if the land is buffer acreage that provides protection for and is contiguous to land otherwise eligible under paragraphs (b)(1), (b)(2), or (b)(4) of this section, subject to other provisions of this section.

(d) Total enrollment in CRP under this section may not exceed 1 million acres. In addition, the maximum size of a land enrolled under this section may not exceed, as determined by CCC:

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

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

(3) 20 contiguous acres for land made eligible by paragraph (b)(4) of this section; or

(4) A suitable buffer as determined by the Deputy Administrator for lands added under paragraph (c) of this section.

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

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

(g) Except as otherwise determined by CCC, all other requirements of this part apply to enrollments under this section, and CCC may add such other requirements or conditions as it deems necessary. Such additional conditions include, but are not limited to, payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

■ 6. In § 1410.22, amend paragraph (b) by adding the words "and management activities" immediately after the word "practices" and by adding the following sentence at the end of paragraph (b) to read as follows:

§ 1410.22 CRP conservation plan.

* * * * *

(b) * * * The producer must undertake management activities on the land as needed throughout the term of the CRP contract to implement the conservation plan.

* * * * *

■ 7. Amend § 1410.40 by adding a new paragraph (g) to read as follows:

§ 1410.40 Cost-share payments.

* * * * *

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

■ 8. Amend § 1410.42 by revising paragraph (d) to read as set forth below:

§ 1410.42 Annual rental payments.

* * * * *

(d) The maximum amount of rental payments that a person or legal entity

may receive, directly or indirectly, under CRP for any fiscal year must not exceed \$50,000. The regulations in part 1400 of this chapter will be applicable for determining whether the limit has been exceeded.

* * * * *

■ 9. Revise § 1410.44 to read as follows:

§ 1410.44 Average Adjusted Gross Income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds \$1,000,000 or as further specified in part 1400 subpart F of this chapter.

(b) The limit specified in paragraph (a) of this section may be waived as specified in part 1400 subpart F of this chapter.

■ 10. Revise § 1410.53 to read as follows:

§ 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 found to contain material errors of fact or is not in conformity with this part, these regulations will prevail, and CCC may, at its sole discretion, terminate or modify the CRP contract, effective immediately or at a later date as CCC determines appropriate.

Signed at Washington, DC, on June 23, 2009.

Dennis J. Taitano, Acting for Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9-15305 Filed 6-26-09; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0510; Directorate Identifier 2009-NE-16-AD; Amendment 39-15948; AD 2009-13-09]

RIN 2120-AA64

Airworthiness Directives; Microturbo SA Saphir 2 Model 016 Auxiliary Power Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above, on which the