

included in this interim rule. Fourteen comments supported the inclusion of certain orchard lands, vineyards, or berry lands as proposed. There were no comments opposed to the proposed inclusion. Therefore, the interim rule also makes certain orchard lands, vineyards, or berry lands eligible for enrollment under the continuous CRP and CREP.

Discussion of the Interim Rule

Based on the 2002 Act and FSA discretion, changes have been made to cropping history requirements, eligible land, the EBI, the FWP, managed haying and grazing authorities, and providers of technical assistance.

Generally, by statute, CRP land enrolled in the program must be cropland, but the rules for the program provide that the crop history must generally be a history of production of tillable crops. That limitation provides for focusing the CRP on the conversion of land with the most intensive uses to a cover crop. Also, this focus emphasizes the "reserve" nature of the program and can provide a greater amount of public benefit by producing savings in other programs as recompense for the funds spent on this program.

This rule, at 7 CFR part 1410.6(a)(3)(b)(13), makes certain orchard lands, vineyards and berry lands eligible for the continuous sign-ups held for the CRP and for enrollments in the CREP. FSA has determined that these lands could provide significant environmental benefits in these signups which involve certain geographical practices such as conservation buffers along stream banks. Such an expansion of the eligibility criteria for the program was requested by a number of State governments involved in CREP agreements.

Cropping History Requirements

This rule, at 7 CFR part 1410.6(a), changes the cropping history requirements required for certain land to be eligible. Before, by rule, land must have been cropped in two of the five years preceding enrollment to be eligible. However, the 2002 Act changed that requirement so that cropland, to be eligible, must be planted or considered planted for four of the six years preceding the date of enactment of the 2002 Act on May 13, 2002. Also, in 7 CFR part 1410.6, this rule provides that land may be eligible if it was devoted to a conserving use under section 1231(c) of the 1985 Act. For CRP purposes, conserving use means, during 1996 through 2001, any planted alfalfa and planted other multi-year grasses and

legumes and summer fallow in a rotation with agricultural commodities are defined as conserving uses for CRP purposes.

Other Changes in Land Eligibility Requirements

The 2002 Act amendments to the 1985 Act expanded eligibility authority for marginal pasture land from riparian buffers "devoted to trees" to "devoted to appropriate vegetation, including trees," in or near riparian areas. Thus, under 7 CFR part 1410.6, CCC has made marginal pasture land acreage eligible if it is devoted to a riparian buffer practice, a new wetland practice, or a new wildlife habitat buffer practice. This enhancement will allow riparian buffers, wetlands, and wildlife habitat practices intrinsically valuable in addressing Federal and State environmental and wildlife issues near streams, rivers, or other water bodies to be established where tree plantings are not practical or appropriate. These practices improve water quality, reduce flood and storm event damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands are also valuable in providing filtering functions because of their location between land and water.

The 2002 Act amendments also extends eligibility to cropland when enrollment would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer. To implement this new provision, CCC has added to the list of eligible conservation practices in 7 CFR part 1410.6 a practice that has water savings as its primary function. Water savings will advance the goal of providing the nation and States with adequate water to meet farming and ranching needs as well as the needs of an increasing population.

Another new land eligibility provision in the 2002 Act amendments provides that the remainder of cropland in a field that is not enrolled as a "buffer" may be enrolled if it is less than 50 percent of the cropland in that field, is infeasible to farm, and is enrolled at regular enrollment rates. For this provision, at 7 CFR part 1410.6 provides that a "buffer" will be considered to be riparian buffers, filter strips, or areas buffering wellhead protection areas. "Infeasible to farm" is defined as areas that are too small or isolated to be economically farmed, as determined by the FSA.

The 2002 Act also made land enrolled in the CRP but nearing contract completion eligible for new enrollment. Accordingly, any acreage currently in the CRP will be basically eligible to be

offered for continued enrollment if the current contract is scheduled to expire the day before a new contract would become effective. However, land will be ineligible for enrollment if it is subject to a CRP useful life easement that extends beyond the current contract term. The interim rule provides that re-enrollment of currently enrolled acreage will be based on the same criteria as for enrolling new acreage.

The EBI has been modified after extensive negotiations with resource professionals from the Forest Service, Natural Resource Conservation Service (NRCS), U.S. Environmental Protection Agency, U.S. and Wildlife Service (FWS), U.S. Geological Survey (USGS) and others and from public scoping and public comments submitted during development of the programmatic environmental impact statement.

The 2002 Act made no changes to the EBI authority. However, the EBI has been re-engineered to continue to encourage the restoration of plantings consistent with the ecosystem where the land is offered. The EBI has also been simplified to enable producers to run different scenarios independently, reduce error rates, improve customer service by significantly reducing the time needed for a producer to submit an offer, and reduce resources needed to process an offer.

The index may include consideration of soil erosion, water quality, wildlife habitat, enduring benefits, air quality, and cost while also including consideration of other technical factors such as recommendations of the State technical committee, conservation priority areas, permanent wildlife habitat, and tree plantings.

Farmable Wetlands Program (FWP)

Under the 2002 Act amendments, the FWP, at 7 CFR part 1410.11, was expanded from a six-State pilot to all States and may include up to a total of 1 million acres. In general, up to 100,000 acres may be enrolled in any State, except that enrollment of a State may be increased to 150,000 acres after 3 years. The 2002 Act amendments also changed the maximum size of any wetland enrolled under the FWP from five to ten contiguous acres, of which not more than five acres shall be eligible for payment. No more than 40 acres from a tract may be enrolled under the FWP. All acres, including acres ineligible for payment, must be maintained according to an approved conservation plan.

Managed Haying and Grazing

Before the 2002 Act amendments, the 1985 Act generally provided that no