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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Parts 620 and 1467

RIN 0578–AA16

Wetlands Reserve Program

AGENCY: Commodity Credit Corporation, Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) and the Natural Resources Conservation Service (NRCS) are issuing its final rule for the Wetlands Reserve Program. This rule adopts as final the interim rule for the Wetlands Reserve Program published on June 1, 1995, responds to comments received from the public during the comment period, and incorporates specific changes required by the Federal Agriculture Improvement and Reform Act of 1996. The final rule will provide the process by which the Wetlands Reserve Program is administered by the NRCS.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Misso, (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is significant and was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to § 6(a)(3) of Executive Order 12866, CCC and NRCS prepared a cost-benefit assessment of the potential impact of the program. The assessment concluded that several mechanisms at the State and National level of the agency are in place to ensure environmental benefits are maximized for each Federal dollar spent in the WRP. These mechanisms include a comprehensive prioritization and ranking procedure for each site offered for enrollment in the program and the requirement for locally-determined easement payment caps based on the agricultural land value. These mechanisms are developed and implemented on a state-by-state basis, with guidance and coordination from the National level of the agency, to ensure that regional and geophysical variations are addressed. The WRP costs data indicate that the procedures in place are promoting cost-effectiveness. Copies of the cost-benefit assessment are available upon request from Robert Misso, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20250.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither the CCC or NRCS are 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 through an environmental review that this action is a modification of the existing WRP and is covered under the NRCS 1990 Environmental Assessment entitled, ''Wetlands Reserve Program—Environmental Assessment: Wetlands Reserve Provision of the Conservation Program Improvements Act of 1990.'' NRCS supplemented the environmental assessment to evaluate the changes to the program made pursuant to the Federal Agriculture Improvement and Reform Act of 1996. Copies of the environmental assessment with supplement are available upon request from: Robert Misso, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20250.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

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: Wetlands Reserve Program—10.072.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0578–0013.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive. Furthermore, except as provided at 16 U.S.C. 3837a(e)(2), the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR Part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the affects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

The NRCS published the current regulations for the Wetlands Reserve Program as an interim rule on June 1, 1995 (60 FR 28511). Enacted on April 4, 1996, the Federal Agriculture Improvement and Reform Act (the 1996 Act) authorized the enrollment of non-easement acres into the program through the use of restoration cost-share agreements and made other minor changes to the focus of the program. This final rule adopts the procedures outlined in the interim rule with the

addition of the few changes recommended during public comment and/or required by the 1996 Act. These changes are described below. Minor editorial changes have also been made for clarification and administrative purposes. The 1996 Act amended the Food Security Act of 1985 (the 1985 Act), Pub. L. 99–198, to provide that the WRP should be funded by CCC. Accordingly, this final rule is issued by CCC and NRCS.

Discussion of Comments

The NRCS received 16 comments concerning the interim rule during the 60-day public comment period that ended July 31, 1995. Respondents included national wildlife and conservation organizations, state agencies, public utilities, and one State farm organization. Two of the comments simply indicated support for the WRP and did not offer specific suggested changes.

Definitions

NRCS received two comments requesting slight modifications to the definitions in § 620.2 of the interim rule. One comment suggested that the definition for ''State Technical Committee'' be changed to allow the State Conservationist flexibility in delegating the chair position to other members of the committee. Currently, the State Conservationist may delegate the chair position to other NRCS personnel. Even so, implementation of the WRP at the state level remains the responsibility of the State Conservationist and therefore, no changes were made to the definition of State Technical Committee. The commenter also suggested that the definition of ''wetland functions and values'' be revised from ''social worth placed upon these characteristics'' to ''the socioeconomic value placed upon these characteristics.'' This change clarifies the intent of the interim rule and is adopted in this final rule.

NRCS also received a comment from a state forestry agency requesting that ''timber'' be included in the definition for ''wetland functions and values.'' NRCS did not adopt this change because the concept is incorporated in the current definition but the actual term is too specific for a nationwide program which enrolls many different types of wetlands with differing wetlands functions and values.

Another commenter indicated that the definition of ''Conservation Districts'' be modified to reflect better the mission of conservation districts. The NRCS adopts the suggested language as an improvement to the clarity of the definition. Additionally, section 620.3(f) is modified to include conservation districts by specific reference to clarify that NRCS values the special partnership that it has with conservation districts in the effort to improve the Nation's soil, water, and other natural resources, and NRCS will continue to seek input from conservation districts in the administration of its programs.

The Consolidated Farm Service Agency (CFSA) is now known as the Farm Service Agency (FSA). The rule is amended to reflect this name change.

Utility Easements

NRCS received two comments from utility companies, both of which expressed concern about how NRCS would approach the overlapping of a WRP easement with a utility easement. Utility easements are addressed during the title clearance process. During that process, the NRCS must determine whether: (1) NRCS can obtain a subordination agreement from the utility easement holder; (2) the exercise of the utility easement holder's rights would be consistent with the purposes of the WRP easement; or, (3) the exercise of the utility easement holder's rights would undermine the purposes for which the WRP easement would be established. If the NRCS is unable to obtain a subordination agreement from the utility easement holder and the exercise of that easement holder's rights would undermine the WRP easement, then the NRCS will not purchase a WRP easement on that property. One of these commenters also expressed support for the preference given permanent easements by the interim rule.

Water Quality

One utility company commenter requested that the impact on drinking water sources be a ranking factor for giving priority to purchasing a particular easement. One of the conservation organizations also urged that easements that provided water quality functions receive priority treatment. Because water quality is one of the wetland functions for which the easement is being established, the NRCS considers in its ranking process, directly or indirectly, the impact an easement would have on drinking water sources. Currently, each State Conservationist, in consultation with the State Technical Committee, will determine the weight that water quality in general, and impact on drinking water specifically, should receive in the ranking process. In the future, NRCS along with other agencies with wetland responsibilities will use a system (Hydrogeomorphic Modeling (HGM)) to evaluate wetland functions and values more objectively. NRCS will be better able to rank wetland sites for WRP that differ, thus providing for more consistency within and between States.

Compatible Uses

NRCS received four letters from State forestry organizations and one letter from a State farm organization which expressed opposition to language placed in the preamble to the WRP interim rule regarding compatible economic uses of the easement area as it related to forest management activities. NRCS also received a comment, however, from a conservation organization which supported the language used in the preamble, suggesting that some management approaches may not be consistent with the long-term protection of wetland resources.

According to the WRP authorizing language at 16 U.S.C. 3837a(d), compatible economic uses, including forest management, are permitted if consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established. In the preamble, NRCS simply indicated that harvesting methods which are not consistent with the long-term protection and enhancement of wetland functions and values on a particular easement area will not be considered a compatible use. Upon request by a landowner, the NRCS will evaluate the particular site on an easement area and will make a determination of what silvicultural approach, timing, intensity, and duration may be considered compatible with the wetland functions and values.

The document granting permission for forest management activities, or any other request for a compatible use, specifies the amount, method, timing, intensity, and duration of the use being granted. The NRCS, however, reserves its ability to modify a particular use should easement area conditions change. The management plan for an easement area is a ''living document'' and may be updated with additional compatible use requests as they are received from a landowner over time.

For example, the wetland functions and values that are established by the WRP restoration efforts are not available for mitigation purposes. However, at a later date, the landowner may request permission from the NRCS to enhance further the functions and values established by the WRP restoration effort. If the NRCS determines that the enhancement action is a compatible use and is clearly beyond the scope of restoration actions that would be feasible under any subsequent WRP

restoration efforts, the additional increment of functions and values which directly result from the landowner's approved enhancement action may be available to meet mitigation requirements under other federal, state, or local law.

No matter the use, the test remains: ''Is a particular proposed use consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established and Federal funds expended?'' This approach is consistent with the WRP statute and does not require any change to the WRP rule.

Non-permanent Easements

The NRCS received four comments in which the commenters expressed concern that the interim rule gave such priority to the enrollment of permanent easements that the enrollment of non-permanent easements would be completely excluded from the program. One commenter expressed the concern that the priority placed on permanent easements overshadowed the other priority mandated by statute. In particular, the WRP authorizing legislation at 16 U.S.C. 3837c(d) provides that priority should be placed on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife.

Sections 620.8(b)(4) and (5) of the rule require that the NRCS consider whether any permanent easement offer has the ecological and cost characteristics which warrants acquisition before proceeding to acquire a non-permanent easement. The commenters recognized that non-permanent easements receive a different easement payment than a permanent easement, but either did not express specific opposition to the differentiated payment rate or expressed support for it. The 1996 Act amendments require, to the extent practicable after October 1, 1996, that NRCS enroll one-third of total program acres through the use of 30-year easements.

In response to the comments received and explicit direction from statute, NRCS has removed §§ 620.8(b)(4) and (5) and thus eliminated these particular constraints upon the enrollment of non-permanent easements. The 1996 amendments also provided that the restoration cost-share rate for a 30-year easement should be from 50 to 75 percent. The interim rule provided that the easement payment rate for a non-permanent easement should parallel the restoration cost-share rate. Therefore, § 620.8(b)(3) has been amended to indicate that the easement payment for a 30-year easement shall be between 50 percent and 75 percent of that which would have been paid for a permanent easement.

One commenter noted that the $50,000 annual easement payment limitation discriminated unduly against the acquisition of less than permanent easements. The interim final rule had established the $50,000 annual easement payment cap for all non-permanent easement acquisitions. However, by statute, the $50,000 annual easement payment limitation for non-permanent easements is a discretionary cap. As such, the NRCS has determined that in special circumstances involving projects with partnership funding or participation, a greater annual easement payment amount may be available. Additionally, the statute provides that payments are exempted from the payment limitation if the payment is received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by NRCS. The final rule is amended accordingly.

Section 620.17 addresses the administrative appeal procedures to be used when a person desires review of an administration determination concerning eligibility for participation. The interim final rule for the National Appeals Division (NED) Rules of Procedures, 60 FR 67298 (December 29, 1995), amended § 620.17 to include reference to 7 CFR Part 780 and 7 CFR Part 11. The NAD interim final rule also amended 7 CFR Part 614, the NRCS appeals procedures originally referenced in § 620.17. Part 614, as amended, references the other appeal procedures at 7 CFR Part 780 and 7 CFR Part 11, and their additional mention in § 620.17 is therefore redundant. This final rule amends § 620.17 to remove the redundant reference to 7 CFR Part 780 7 CFR Part 11.

Discussion of the Federal Agriculture Improvement and Reform Act

The Federal Agriculture Improvement and Reform Act (the 1996 Act) was enacted on April 4, 1996. The 1996 Act amended the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, to re-authorize the Environmental Conservation Acreage Reserve Program as the umbrella conservation program encompassing the Conservation Reserve Program (16 U.S.C. 3831–3836), the newly-created Environmental Quality Incentives Program (16 U.S.C. 3840), and the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*). Under the Environmental Conservation Acreage Reserve program, the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements and other conservation needs.

The 1996 Act effects several changes to the administration of the WRP. In particular, the 1996 Act amendments authorize the enrollment of land into the Wetlands Reserve Program until 2002, establishes a program cap at 975,000 acres, and provides that eligible land must maximize wildlife benefits and wetland functions and values.

The 1996 Act amendments also require that, to the extent practicable beginning October 1, 1996, one-third of the remaining program acres be enrolled through the use of permanent easements, one-third through the use of 30-year easements, and one-third through the use of restoration cost-share agreements. Further, after October 1, 1996, no new permanent easement can be enrolled until at last 75,000 acres of non-permanent easement are enrolled in the program. Section 721 of the agriculture Appropriations Act, enacted August 6, 1996, stated that this condition on enrollment ''shall be deemed met upon the enrollment of 43,333 acres through the use of temporary easements: Provided further that the Secretary shall not enroll acres * * * through the use of new permanent easements in fiscal year 1998 until the Secretary has enrolled at least 31,667 acres in the program through the use of temporary easements.'' In recognition that the NRCS must enroll lands that maximize wildlife benefits and other wetland functions and values, achieve cost-efficient restoration, and provide the three identified enrollment approaches, the NRCS will emphasize enrolling lands that have the least likelihood of being reconverted. The NRCS will work with landowners and other conservation partners to achieve these lasting benefits for wetland resources.

Through several public forums across the county, the NRCS received comments from the public about the new conservation programs and the changes to existing conservation programs as a result of the enactment of the 1996 Act. The NRCS greatly appreciates the input provided by the public through the forums and written comments submitted to the agency. The NRCS will consider these comments during the formulation of its policies and guidelines.

Many of the changes to the WRP required by the 1996 Act are directives to the agency which do not impact the

WRP rule. Some of the amendments, however, require specific, non-discretionary changes to the WRP regulations. Since these changes are mandatory and do not require agency interpretation, the CCC and NRCS have incorporated them into this final rule. The following sections and parts are impacted:

Section 620.2

The 1966 Act made several changes to other programs which relate to WRP, including the wetland conservation provisions, 7 CFR Part 12, and the Conservation Reserve Program, 7 CFR Parts 704 and 1410. Therefore, certain definitions are removed from this part to avoid any inconsistencies with the implementation of these other provisions.

Section 620.3

The 1996 Act requires the Department of Agriculture to avoid duplication of conservation plans required for the implementation of the highly erodible land conservation provisions of the Food Security Act of 1985, CRP, and the WRP. In response to this requirement, § 620.3(h) is amended to include coordination of the development of conservation plans as an additional goal in the administration of the WRP. The 1996 Act amendments also provide that areas may be designated as conservation priority areas to help producers comply with nonpoint source pollution requirements and other conservation needs. Therefore, a new sentence is added to § 620.3(h) that the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements and other conservation needs.

Section 620.4

The 1996 Act amendments authorize the enrollment of acres into the WRP through the use of restoration cost-share agreements. Therefore, the first sentence of § 620.4 has been amended to include the term ''restoration cost-share agreements.''

The 1996 Act amendments links eligibility for WRP easement or cost-share payments to the highly erodible land and wetland conservation provisions of the 1985 Act, 16 U.S.C. 3801 *et seq.*, 7 CFR part 12. Therefore, landowner eligibility, § 620.4(c), is amended to reflect that a person may not be eligible for participation in WRP if the requirements of 7 CFR part 12 have not been met.

The 1996 Act amendments specify that the 25 percent county enrollment cap and the 10 percent county easement cap only apply to acres enrolled in the Conservation Reserve Program (CRP) and the WRP, and not all acres enrolled in the Environmental Conservation Acreage Reserve Program. Therefore, the reference to the Environmental Conservation Acreage Reserve Program in § 620.4(b)(1) has been replaced with specific reference to the CRP and the WRP. In addition to consideration of any adverse effect on the local economy, the 1996 Act amendments require that a waiver from the county caps can only be approved if operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812. Therefore, § 620.4(b)(2) has been amended to incorporate this new criterion.

The 1996 Act amendments expanded the eligibility criteria to require specifically that land enrolled in the program maximize wildlife benefits. Therefore, § 620.4(d) is amended to incorporate the additional eligibility criterion.

The 1985 Act provides that pasture land established to trees under the CRP is ineligible for enrollment in the WRP. Even though such lands were not enrolled in the program, specific mention of this ineligibility provision was not made in the interim rule. Section 620.4(e) is amended to incorporate specifically this statutory provision.

Section 620.7

The 1996 Act amendments require that after October 1, 1996, to the extent practicable, the NRCS enroll one-third of the acres through the use of permanent easements, one-third of the acres through the use of 30-year easements, and one-third of the acres through the use of restoration cost-share agreements. The NRCS has considered land enrolled in the program at the time the NRCS determines that a landowner's offer is eligible, funds are committed to acquire that particular easement, and the landowner agrees to continue in the program. Because the 1996 Act amendments require that the NRCS track the total acres enrolled through the use of permanent easements, 30-year easements, and restoration cost-share agreements, § 620.7(b) is amended to clarify that enrollment occurs at this stage in the process.

Sections 620.8 and 620.13

The 1996 Act amends 16 U.S.C. 3837a(f) to eliminate the specific reference to lump sum payments for permanent easements only, and further provides that annual compensation for any easement may be in not less than 5 nor more than 30 annual payments of either equal or unequal size. Therefore, § 620.8(e) and § 620.13(b)(1), which incorporated the original statutory provisions as to payments, are amended to reflect this specific change in law regarding easement payments.

Section 620.9 and 620.10

To reflect that the NRCS shall enroll land into the WRP through the use of restoration cost-share agreements, section 620.9 is amended by adding specific reference to restoration cost-share agreements and making associated editorial adjustments to this new type of enrollment mechanism. Additionally, the 1996 Act amendments provide that the cost-share rate for restoration associated with 30-year easements shall be no less than 50 nor more than 75 percent. Section 620.9(a) incorporates this new statutory provision.

Likewise, the requirements in § 620.10, such as the granting of an easement to the United States, are specific to enrollment into the program through the use of an easement and not restoration cost-share agreements. Therefore, the heading to § 620.10 reflects that the section is no longer applicable as ''Program requirements'' but now more appropriately refers to easement enrollment requirements.

Section 620.11

The 1996 Act amendments provide that the development of the restoration plan shall be made through the local NRCS representative, in consultation with the State Technical Committee. The 1996 Act amendments also removes the specific requirement that consultation with the Department of the Interior means agreement at the local level and consultation at the State level. Therefore, NRCS has added these changes to § 620.11 by 1) by removing the regulatory language in paragraph (a) which required agreement with the U.S. Fish and Wildlife Service at the local level, and 2) replacing the language with a new paragraph (a) which now references the development of the plan by the local NRCS representative.

Section 620.14

During the implementation of the program under the interim rule, confusion arose regarding the language in § 620.14 about ''associated'' contract. The term ''associated'' was intended to mean a contract ''associated with the program'' other than the easement deed. As stated, the term ''associated'' inadvertently created the mistaken conclusion that the contract is attached to the easement deed. Therefore, the term ''associated'' has been removed to improve the clarity of this section.

Parts 620 and 1467

Because funds of the Commodity Credit Corporation shall be used for administration of the WRP, the WRP rule is moved from Part 620 to Part 1467 of Title VII of the CFR. Furthermore, certain administrative responsibilities may be assumed by other agencies with the Department of Agriculture, and the rule is modified accordingly.

List of Subjects in 7 CFR Part 1467

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

Accordingly, the interim rule establishing 7 CFR part 620 which was published at 60 FR 28511 on June 1, 1995, is adopted as a final rule with the following changes:

1. In 7 CFR, chapter VI, part 620 is re-designated as chapter XIV, part 1467, and the sections are re-designated as set forth below:

Old section	New section
620.1	1467.1
620.2	1467.3
620.3	1467.2
620.4	1467.4
620.5	1467.5
620.6	1467.6
620.7	1467.7
620.8	1467.8
620.9	1467.9
620.10	1467.10
620.11	1467.11
620.12	1467.12
620.13	1467.13
620.14	1467.14
620.15	1467.15
620.16	1467.16
620.17	1467.17
620.18	1467.18

PART 1467—WETLANDS RESERVE PROGRAM

2. The authority citation for re-designated part 1467 continues to read as follows:

Authority: 16 U.S.C. 590a, *et seq.;* and 16 U.S.C. 3837, *et seq.*

3. Section 1467.1 is amended by revising the heading to the section to read as follows:

§ 1467.1 Applicability.

* * * * *

4. Section 1467.2 is amended by revising paragraphs (c), (f), and (h) and amending paragraph (g) by revising the second and third sentences to read as follows:

§ 1467.2 Administration.

* * * * *

(c) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS and the Farm Service Agency will seek agreement in establishing policies, priorities, and guidelines related to the implementation of this part.

* * * * *

(f) The Department may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist the NRCS with educational efforts, easement management and monitoring, outreach efforts, and program implementation assistance.

(g) * * * The NRCS may consult with the Forest Service, other Federal or State agencies, conservation districts or other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, the Forest Service, Federal or State agency, conservation district, or other organization shall compel the NRCS to take any action with the NRCS determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to: special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or, for other goals of the WRP found in this part. The Department may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

5. Section 1467.3 is amended by removing the definitions for ''Farmed wetland'', ''Farmed wetland pasture'', and ''Prior converted cropland''; by revising the definitions for ''Conservation District'', ''Conservation Reserve Program'', ''Contract'', ''Person'' and the introductory text of ''Wetlands functions and values''; and by adding a definition for ''Department'' to read as follows:

§ 1467.3 Definitions.

* * * * *

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831–3836.

* * * * *

Contract means the document that specifies the obligations and rights of any person who has been accepted for participation in the program.

* * * * *

Department means the United States Department of Agriculture (USDA) and includes the Commodity Credit Corporation or any USDA agency or instrumentality delegated program responsibility by the Secretary of Agriculture.

* * * * *

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

* * * * *

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including: * * *

* * * * *

6. Section 1467.4 is amended by revising the first sentence of paragraph (a), and revising paragraphs (b)(1), the second sentence of (b)(2), the introductory text of (c), paragraph (d)(2), the introductory text of (d)(3), and paragraph (e)(2) to read as follows:

§ 1467.4 Program requirements.

(a) *General.* Under the WRP, the Department may purchase conservation easements from, or enter into restoration cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. * * *

(b) * * *

(1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired under the CRP and the WRP.

(2) * * * Such a waiver will only be approved if it will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* The NRCS may determine that a person is not eligible to participate in the WRP or receive any WRP payment because the person did not comply with the

provisions of 7 CFR part 12. To be eligible to enroll an easement in the WRP, a person must: * * *

* * * * *

(d) * * *

* * * * *

(2) Land shall only be considered eligible for enrollment in the WRP if the NRCS determines, in consultation with the U.S. Fish and Wildlife Service, that:

(i) Such land maximizes wildlife benefits and wetland values and functions;

(ii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration; and

(iii) Such land meets the criteria of paragraph (d)(3) of this section.

(3) The following land may be eligible for enrollment in the WRP, which land may be identified by the NRCS pursuant to regulations and implementing policies pertaining to wetland conservation found at 7 CFR part 12, as:

* * *

* * * * *

(e) * * *

(2) Land that contains timber stands established under a CRP contract or pasture land established to trees under a CRP contract.

* * * * *

7. In § 1467.6, paragraphs (a) through (c) are re-designated as paragraphs (b) through (d), a new paragraph (a) is added to read as follows:

§ 1467.6 Establishing priority for enrollment of properties in WRP.

(a) The NRCS shall place priority on the enrollment of those lands that will maximize wildlife values (especially related to enhancing habitat for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

* * * * *

8. Section 1467.7 is amended by revising the heading to the section and the heading to paragraph (b) to read as follows:

§ 1467.7 Enrollment of easements.

* * * * *

(b) *Effect of letter of intent to continue (enrollment).* * * *

* * * * *

9. Section 1467.8 is amended by

(a) Revising paragraph (b)(3);

(b) Removing paragraphs (b)(4), (b)(5), and (e)(2);

(c) Re-designating paragraph (e)(3) as (e)(2);

(d) Revising re-designated paragraph (e)(2); and,

(e) Revising paragraph (h).

The revisions read as follows:

§ 1467.8 Compensation for easements.

* * * * *

(b) * * *

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Additionally, the economic value of the easement interests being acquired is less for a non-permanent easement than that associated with a permanent easement. An easement payment for the short-term 30-year easement shall not be less than 50 percent nor more than 75 percent of that which would have been paid for a permanent easement.

* * * * *

(e) * * *

(2) Annual easement payments may be made in no less than 5 annual payments and no more than 30 annual payments of equal or unequal size.

* * * * *

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person may not exceed $50,000 except for:

(1) Payments made pursuant to projects involving partnership funding or participation; or

(2) Payment received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by NRCS.

* * * * *

10. In § 1467.9, the first sentence of the introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 1467.9 Cost-share payments.

(a) The Department may share the cost with landowners of restoring the enrolled land as provided in the WRPO.* * *

* * * * *

(2) On enrolled land subject to a non-permanent easement or restoration cost-share agreement, the Department shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Restoration cost-share payments offered by NRCS for the short-term, 30-year easements shall be 50 to 75 percent.

* * * * *

11. In § 1467.10, the heading for the section and paragraph (d)(5) are revised to read as follows:

§ 1467.10 Easement participation requirements.

* * * * *

(d) * * *

(5) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area;

* * * * *

12. In § 1467.11, paragraph (a) is revised and a new sentence is added at the end of paragraph (b) to read as follows:

§ 1467.11 The WRPO development.

(a) The development of the WRPO shall be made through the local NRCS representative, in consultation with the State Technical Committee, and with consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District.

(b) * * * The WRPO shall be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result.

13. In § 1467.12, paragraph (b) is revised to read as follows:

§ 1467.12 Modifications.

* * * * *

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the landowner and the State Technical Committee and following consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District. Any WRPO modification must meet WRP program objectives, and must result in equal or greater wildlife benefits, wetland functions and values, ecological and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement will require agreement from the landowner and require execution of an amended easement.

14. Section 1467.13 is amended by revising paragraph (b)(1) to read as follows:

§ 1467.13 Transfer of land.

* * * * *

(b) * * *

(1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the

Department receives an assignment of proceeds.

* * * * *

15. In § 1467.14, remove the word ''associated'' from paragraphs (a) and (c).

16. Section 1467.17 is amended by revising paragraph (a) to read as follows:

§ 1467.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

* * * * *

17. In addition to the amendments set forth above, in 7 CFR part 1467 remove the words ''Consolidated Farm Service Agency'' wherever they appear and add, in their place, the words ''Farm Service Agency''.

18. In addition to the amendments set forth above, in 7 CFR part 1467 remove the word ''NRCS'' whenever it appears and add, in its place, the word ''Department''.

Signed at Washington, D.C. on August 8, 1996.

Paul Johnson,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

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Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 96–005DF]

RIN 0583–AC08

Net Weight Statement for Shingle Packed Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by removing an obsolete labeling requirement for certain sizes of shingle packed bacon. This rule applies the same requirements for net weight statements to all sizes of shingle packed bacon.

DATES: This rule will be effective on October 15, 1996 unless FSIS receives written adverse comments or written notice of intent to submit adverse comments on or before September 13, 1996. If FSIS receives adverse comments or notice of intent to submit adverse comments within the scope of this rule, FSIS will withdraw this rule and publish a proposed rule for public comment.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, Docket #96–005DF, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 254–2590.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been petitioned to amend the Federal meat inspection regulations by removing an obsolete labeling requirement for certain sizes of shingle packed bacon. (Shingle packed bacon is sliced bacon packed in overlapping rows usually contained in a rectangular package.)

Section 317.2(h)(13) of the Federal meat inspection regulations requires that the labeling of packages of bacon *not* in 8-ounce, 1-pound, or 2-pound containers display the net quantity of the contents (net weight statement) with the same prominence as the largest feature of the label. In addition, the statement must be printed in a color of ink that contrasts sharply with the label's background.

Section 317.2(h)(9)(v) provides that shingle packed bacon packed in 8-ounce, 1-pound, or 2-pound containers is exempt from the labeling requirements regarding: (1) the placement of the net weight statement within the bottom 30 percent of the principal display panel, and (2) the expression of the net weight statement in terms of both pounds and ounces, if the net weight statement appears in a conspicuous manner on the principal display panel.

Historically, shingle packed bacon was sold in 8-ounce, 1-pound, or 2-pound packages. Over time, bacon manufacturers began packing bacon of different weights in the same size containers used for the traditional 8-ounce, 1-pound, and 2-pound packages of bacon. For example, a 12-ounce package of bacon was packed in the same size container as a 1-pound package of bacon. To ensure that consumers were aware that there was less product in the same-size container, FSIS promulgated regulations to highlight to consumers the net weight statement on these packages. However, with heightened consumer awareness, the use of nutritional labeling, and the use of unit pricing at the retain level, FSIS agrees with the petitioner that this labeling requirement is no longer needed.

Therefore, FSIS is amending the Federal meat inspection regulations by removing the labeling requirement for shingle packed bacon packed in other than 8-ounce, 1-pound, or 2-pound containers in § 317.2(h)(13). FSIS is also removing the language that refers to 8-ounce, 1-pound, and 2-pound packages of shingle packed bacon from § 317.2(h)(9)(v). This action provides the same requirements for net weight statements for all sizes of shingle packed bacon.

Effective Date

This rule is being published without a prior proposal because this action is viewed as noncontroversial, and FSIS does not anticipate any adverse public comments will be received. This rule will be effective 60 days after the date of publication in the Federal Register unless FSIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

If no adverse comments are received, FSIS will publish a notice in the Federal Register confirming that the rule is effective on the date indicated.

Executive Order 12866 and Effect on Small Entities

This rule is considered not significant and therefore has not been reviewed by the Office of Management and Budget.

The Administrator, FSIS, has determined that this rule will not have a significant impact on a substantial number of small entities. The rule merely removes an obsolete labeling requirement for shingle packed bacon packed in other than 8-ounce, 1-pound, or 2-pound containers.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR Part 317

Meat inspection, Food labeling.

For the reasons discussed in the preamble, 9 CFR part 317 is amended as follows: