

**§ 1450.212 Establishment payments.**

(a) Establishment payments will be made available upon a determination by CCC that an eligible practice, or an identifiable portion of a practice, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, such payments will be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

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

(d) Establishment payments may be authorized for the replacement or restoration of practices on land for which assistance has been previously allowed under BCAP, only if the failure of the original practice was due to reasons beyond the control of the participant, as agreed to by CCC.

(e) In addition, CCC may make partial payments when the participant completes identifiable components of the contract. CCC may make supplemental establishment payments, if necessary.

**§ 1450.213 Levels and rates for establishment payments.**

(a) CCC will pay not more than 75 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan.

(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 CCC. This means that the calculated 75 percent of the average cost may represent less than 75 percent of the actual cost for an individual participant.

(c) Except as otherwise provided for in this part, a participant may receive, in addition to any payment under this

part, establishment assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in BCAP without a commensurate reduction in BCAP establishment payments.

**§ 1450.214 Annual payments.**

(a) Annual payments will be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the BCAP contract.

(b) Based on the regulations in §1410.42 of this chapter and as determined by CCC, annual payments include a payment based on all or a percentage of:

(1) A weighted average soil rental rate for cropland;

(2) The applicable marginal pastureland rental rate for all other land except for nonindustrial private forest land;

(3) For forest land, the average county rental rate for cropland as adjusted for forest land productivity for nonindustrial private forest land; and

(4) Any incentive payment as determined by CCC.

(c) The annual payment will be divided among the participants on a single contract as agreed to in such contract, as determined by CCC.

(d) A participant that has an established eligible crop and is therefore not eligible for establishment payments under §1450.212 may be eligible for annual payments under the provisions of this section.

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

(f) Annual payments will be reduced, as determined by CCC:

(1) By a percentage of the sum of the sale price and payments under subpart B of this part for the crop collected or harvested from the contract acreage as follows:

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(i) By 1 percent if the eligible crop is delivered to a biomass conversion facility for conversion to cellulosic biofuels as defined by 40 CFR 80.1401;

(ii) By 10 percent if the eligible crop is delivered to a biomass conversion facility for conversion to advanced biofuels;

(iii) By 25 percent if the eligible crop is delivered to a biomass conversion facility for conversion to heat, power, or biobased products;

(iv) By 100 percent if the eligible crop is used for a purpose other than conversion to heat, power, biobased products, or advanced biofuels;

(2) If the producer violates a term of the contract; or

(3) In other circumstances deemed necessary or appropriate to carry out BCAP.

**§ 1450.215 Transfer of land.**

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, land subject to a BCAP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new BCAP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator will assume all obligations of the BCAP contract of the previous participant.

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

(i) Establishment payments will be made to the past or present participant who established the practice; and

(ii) Annual payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in §1450.214(c).

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a BCAP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, or such other time as CCC determines to be appropriate, such con-

tract will be terminated with respect to the affected portion of such land, and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Must refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by CCC. The provisions of §1450.211(g) will apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains BCAP contract acreage cannot be a party to the contract by succession. However, through an addendum to the contract, if the current operator of the property is one of the contract participants, the contract may remain in effect and, as permitted by CCC, such operator may continue to receive payments under such contract if CCC determines that such allowance is in the public interest and:

(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.

**PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM**

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

SOURCE: 75 FR 39140, July 8, 2010, unless otherwise noted.

**§ 1455.1 Purpose and administration.**

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA-HIP).