



August 27, 2009

CRP Interim Rule Comments
c/o PAI Consulting
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Via electronic submission: www.regulations.gov

Conservation Reserve Program Comments

I am writing to provide the comments of the National Wildlife Federation, Nebraska Wildlife Federation, North Carolina Wildlife Federation, Prairie Rivers Network and South Dakota Wildlife Federation on the Interim Rule to implement portions of the Conservation Reserve Program provisions of the 2008 Farm Bill.

National Wildlife Federation is America's largest member-supported conservation organization. Through our national organization and in partnership with our state affiliates, the National Wildlife Federation works to actively educate, inspire, and promote achievable solutions to everyday Americans in communities from coast-to-coast.

Nebraska Wildlife Federation is a state-wide organization dedicated to Nebraska's wildlife and wild places through education, fish and wildlife conservation, and public policy. Nebraska Wildlife Federation has participated in the Nebraska State Technical Committee deliberations for more than a decade.

North Carolina Wildlife Federation, founded in 1945, is the leading advocate for all North Carolina wildlife and its habitat. With the support of its affiliate clubs and local chapters, the Federation works statewide for wildlife conservation, habitat protection and connecting people to nature.

Prairie Rivers Network is Illinois' statewide river conservation organization and the state affiliate of the National Wildlife Federation. Prairie Rivers staff serve on the Illinois State Technical Committee and WHIP and EQIP subcommittees.

South Dakota Wildlife Federation, founded in 1945, is the state's leading voice in fishing and outdoor recreation, with 23 affiliate clubs spread throughout the state. South Dakota Wildlife

Federation has been very active in agricultural policy issues, including the South Dakota USDA State Technical Committee.

While we have comments to make concerning the changes made to the rules, we would also like to respond to USDA's invitation to provide comments on the future direction of the Conservation Reserve Program.

The New Rules Should Better Reflect the New Program Purpose: Addressing State, Regional and National Conservation Initiatives

Congress revised the purposes of the Conservation Reserve Program to include "to address issues raised by State, regional, and national conservation initiatives" (Section 2101 of the new Farm Bill). The new purpose is in addition to the purposes included in the 2002 Farm Bill, which are "to conserve and improve the soil, water, and wildlife resources of such land" (16 USC 3831(a)).

This is a very important new purpose of the Conservation Reserve Program, yet its significance appears to be largely ignored by the rule issued in June, 2009. The "Background" information on the rule notes that 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..." after which follows 10 other key changes made to the law. The Background language notes that the provisions of this rule would only adopt "statutory requirements for three items in the foregoing list; namely those regarding: FWP, thinning of trees to improve the condition of the resources, and amended gross income..."

We believe the new program purpose related to State, regional and national conservation initiatives is at least as important as any of the ten enumerated changes in the statute, but we do not believe that the rule as published adequately integrates this new purpose into the program rules. The only change USDA made to implement this important change was in Section 1410.3, where USDA the statutory language regarding State, regional and national conservation initiatives is added to the program purpose section of the rules.

There are, however, other sections of the rule that need to be considered.

The existing Definitions section of the rule (7 CFR 1410.2) does not include a definition of "State, regional or national conservation initiative", nor does the rule indicate who would determine what counted as such an initiative (the Secretary? State FSA director? State FSA committee with input from the NRCS state conservationist and state technical committee?). It would seem obvious that some initiatives would meet this definition (e.g., state wildlife plans), but would a state or regional air quality plan meet the test, since air quality is not a statutory purpose of the CRP? ***The rules provide no guidance on who would indicate which initiatives would be included, or by what standards they would be evaluated.***

Existing 7 CFR 1410.8 covers designation of State conservation priority areas, and the other purposes of the program (soil, water and wildlife) are incorporated -- along with several purposes that are not statutorily designated CRP program purposes -- in determining whether a region is eligible for priority area designation. ***The new rule should, but does not, incorporate the new***

purpose of meeting State, regional and national conservation initiatives into this section as a basis for making an area eligible for conservation priority area status.

Existing 7 CFR 1410.22 outlines what elements must be included in a Conservation Reserve Program conservation plan, and again the old language incorporates the statutory purposes of the program (soil, water and wildlife) -- again along with several purposes that are not statutorily designated CRP program purposes. ***The new rule should, but does not, incorporate the new purpose of meeting State, regional and national conservation initiatives into this section as a basis for practices and management activities included in the CRP conservation plan.***

Existing 7 CFR 1410.31 outlines how USDA will determine which CRP offers are acceptable. Here again, the existing rule incorporates soil, water and wildlife -- along with air quality, not a designated program purpose -- as factors USDA will use to evaluate CRP contract offers. ***The new rule should, but does not, incorporate the new purpose of meeting State, regional and national conservation initiatives into this section as one of the factors USDA will use to evaluate the acceptability of CRP contract offers.***

There are other opportunities for USDA to incorporate this new program purpose into its program administration. For instance, in evaluating CRP contract offers during whole-field signup periods, USDA has used an Environmental Benefits Index that incorporates state-level information about high-priority cover, as well as designated conservation priority areas. USDA could help focus CRP benefits even more to meet State, regional or national conservation initiatives by reserving a larger share of the EBI points for state-designated factors such as conservation priority areas, kinds of cover established, or management practices needed to achieve designated conservation benefits.

• We urge USDA to re-think how this important new CPR purpose -- addressing issues raised by State, regional and national conservation initiatives -- should be reflected throughout the CRP program rules (7 CFR part 1410). We strongly urge USDA to re-write this interim rule to reflect the concerns noted above or, failing that, to include this important change in the law as an additional issue for implementation as it works through the other changes made to the CRP statute by the 2008 Farm Bill.

In addition, the other changes made by Congress to the Conservation Reserve Program statutes need to be read in the context of those clear purposes. USDA's rulemaking to implement those changes needs to be done with those statutory purposes of the program in mind. For example, while there are many compatible uses of CRP land that can be accommodated while maintaining those purposes, USDA should be careful to not sacrifice the statutory purposes of the programs to achieve these other goals.

Farmable Wetlands Program, Management Practices and Cost-Share for Thinning of Trees

The 2008 Farm Bill (Section 2106) expands the pilot program to enroll wetland and buffer acreage in the Conservation Reserve Program, dubbed the Farmable Wetlands Program. The rule expands the eligibility of the Farmable Wetlands Program to include certain constructed wetlands, land devoted to commercial pond-raised aquaculture, and land subject to the natural overflow of a prairie wetland.

The 2008 Farm Bill (Section 2107) made a technical change to the law which conforms to the administrative practice of requiring participants to undertake management on the land needed to implement the conservation plan. Continued scientific research has shown the important role occasional management such as burning, haying or grazing can play in maintaining healthy grasslands.

The new Farm Bill (Section 2109) also gives USDA specific authority to make cost-share payments to thin trees on CRP land. As trees planted on CRP land mature, thinning often can improve the wildlife value of the land, and can provide other environmental benefits.

- *We believe the language in the rule is appropriate to implement these changes in the law.*

Adjusted Gross Income

The new Farm Bill (Section 1604) revised the Adjusted Gross Income limits, prohibiting CRP payments (and payments for most other conservation programs) to those who earn more than \$1 million, *unless* at least two-thirds of the person's income is from farming.

- *We support the language in the new rule (Section 1410.1) which provides that the rules in place when the CRP contract was signed would apply for the duration of the contract. Once a contract is signed and agreed to, a participant's subsequent financial success should not disqualify them from receiving CRP payments that were agreed to by FSA.*

- *The language of the rule says the benefits would not be available to persons whose average adjusted gross income exceeds \$1,000,000, without mentioning the language with respect to a participant getting two-thirds of their income from farming. We recommend FSA revise the language of the rule to reflect this provision.*

Future Direction of the Program

We appreciate the opportunity to provide comments on the future direction and priorities with respect to the Conservation Reserve Program. The CRP has been the flagship of USDA conservation programs. The widespread conservation benefits of the program have been documented again and again for soil conservation, water quality, and wildlife. The program has also provided other benefits, from stabilizing farm income to reducing the costs of USDA's commodity programs.

While the program is undergoing changes required by Congress, in a land market undergoing shifts due to higher crop prices, we believe the Conservation Reserve Program can and should remain a powerful tool to provide conservation benefits throughout the country for the future. As you think about the future of the CRP, we encourage you to focus on the purposes of the program outlined in statute: "to conserve and improve the soil, water, and wildlife resources of such land, and to address issues raised by State, regional, and national conservation initiatives" (as amended by Section 2101 of the new Farm Bill). We also encourage the USDA to continue to promote the program and the many benefits it provides to farmers, rural communities, and our natural resources.

1. State, Regional and National Conservation Initiatives

As we noted above, we believe Congress made an important change in the program when it adopted a fourth statutory purpose for the CRP: addressing issues raised by State, regional and national conservation initiatives. We believe USDA should make changes in its implementation that will help it achieve this new program purpose, including the suggestions noted above as well as many of those noted below.

2. Maintain Full Enrollment in the Program

Section 2103 of the new Farm Bill reduces the acreage allotted to the Conservation Reserve Program to 32 million acres beginning in fiscal year 2010. With another 3.9 million acres of CRP contracts set to expire in September, 2009, enrollment in the program should be less than 30 million acres by October, 2009 -- more than two million acres below the statutory limit. The large number of CRP contracts set to expire gives USDA plenty of capacity to continue to enroll land in new CRP contracts, and we encourage USDA to utilize this capacity.

With a smaller number of available acres, we all need to find ways to maintain existing conservation benefits -- and hopefully do even more for conservation -- with fewer acres. While we outline below ways to boost the conservation benefits of the program, a key to maintaining CRP conservation benefits will be to keep as many acres as possible enrolled in CRP contracts.

We strongly urge USDA to maintain enrollment in CRP as close as administratively possible to the 32 million acre cap established by Congress. USDA can do this in several ways: careful scheduling of CRP open enrollment opportunities; aggressive outreach to obtain high-quality contract offers from potential participants; and maintaining up-to-date rental rates that reflect current market rates. USDA should also be careful when it sets aside acres for multi-year initiatives (like Conservation Reserve Enhancement Program proposals or regional initiatives) to budget the expected signups year-by-year, to avoid USDA having a large inventory of authorized CRP acres that are designated for particular initiatives but not under contract¹.

3. Provide a More Open, Transparent, Inclusive Process

In the past, the USDA sometimes announced general signups with little warning, and changed the Environmental Benefits Index with little or no outside input, review, or comment. We believe USDA could obtain broader support for the program, better offers from landowners, and more environmental benefits by creating a more open, inclusive, transparent process. USDA should begin meeting regularly with conservation and farm groups to discuss how the current program can better meet the CRP's designated purposes, while providing a program that is also farmer-friendly and provides benefits for rural communities.

¹ In the past, USDA's practice of setting aside a designated number of acres for a multi-year initiative such as a CREP has not been an issue, because the whole program remained well below the statutory cap. With a reduced overall cap and growing use of CREP and state and regional initiatives to target CRP contracts, we expect this to become increasingly important. We encourage USDA to address this, for example, instead of allocating 120,000 acres for a particular CREP proposal, USDA could set aside 40,000 acres times 3 years for that CREP. By assuming that future new contracts would come from contracts expiring in those years, USDA could maintain current enrollment as close as possible to the 32 million acre cap while still providing assurances needed to promote multi-year initiatives.

Before USDA announces a CRP general signup, it should seek input from conservation groups and others, especially when it is considering changes to the Environmental Benefits Index. As we noted above, USDA could bring state-level groups and priorities into the program by reserving a significant share of the contract evaluation points for geographic areas, cover, and management practices deemed high priority in each state or area. USDA could also provide more specific outreach materials to help potential participants understand the EBI and how the decisions they make can improve their chance of getting a contract by boosting environmental benefits. As we note elsewhere, USDA should fund and support additional research into the wildlife, greenhouse gas, and other conservation benefits of CRP contracts, including the benefits that accrue from the various kinds of CRP practices and the CREP and other specific initiatives.

4. Whole-Field CRP Enrollments Remain Important

We recognize that some organizations have suggested a much stronger focus in the CRP on partial field enrollments such as buffer strips, wind breaks, and grass waterways. We appreciate that CRP contracts can deliver very important water quality and other benefits through these kinds of contracts.

We would caution FSA, however, that partial field contracts like buffer strips are not a *replacement* for whole-field CRP contracts when it comes to wildlife benefits. Recent research has confirmed that while buffer strips can provide adequate food and cover resources to support several bird species, they are only marginally suitable as breeding grounds for birds.²

Some bird and other species require large blocks of habitat, and for these species large CRP fields provide essential habitat, especially in regions where a large proportion of the historic grasslands have been converted to cropland or other uses. Greater sage grouse is an example of a species where large blocks of CRP may be playing an important role in keeping the species off of the federal list of threatened and endangered species, despite a long-term downward trend in the population.

We believe that whole-field enrollments must remain an important component of the CRP. We believe that USDA can do much to continue to target whole-field contracts in ways that maximize the conservation benefits, including identifying state and regional priority areas, identifying priority habitats, and identifying management activities and practices that will achieve important wildlife and other goals.

5. Targeted Initiatives Are a Good Model

At a regional level, initiatives like the longleaf pine initiative can play an important role in tackling regional natural resource issues. We urge the Farm Service Agency to join with the Natural Resources Conservation Service and its new Mississippi River Basin regional water quality initiative. CRP contracts could play a very important role in reducing polluted runoff

² See, for example, Kammin, Laura, *Conservation Buffer Filter Strips as Habitat for Grassland Birds in Illinois*, University of Illinois at Urbana-Champaign, 2003; and Bryan, G.G. and Best, L.B., *Avian Nest Density and Success in Grassed Waterways in Iowa Rowcrop Fields*, *Wildlife Society Bulletin*, 22:583-592, 1994.

from farm fields in the Basin through the installation of buffer strips, grassed waterways, and other practices.

The Farm Service Agency should look for other opportunities to use CRP contracts to address regional wildlife and other natural resource concerns. Examples could include regional approaches to providing greater sage-grouse habitat in the West, or lesser prairie chicken habitat in the southern Great Plains.

At the state level, Conservation Reserve Enhancement Program agreements are a good way to focus CRP contracts to address important resource concerns, while also leveraging state or local funding. CREP agreements have been used to improve water quality, address water quantity concerns, and provide wildlife habitat. We encourage USDA to aggressively develop, and be receptive to, other similar initiatives at the state, regional, or national level.

These types of focused initiatives can provide high-priority conservation benefits. They can also provide for a focus on the types of CRP contracts that would be most beneficial in a particular area. The type of enrollment (whole field vs partial field), cover (native grasslands versus trees or shrubs), and management (haying, grazing, fire) can all be targeted to address the particular needs in an area.

As we noted above, another way to improve the targeting of CRP contracts on state-level priorities is to reserve a larger share of the EBI points for state-designated factors such as conservation priority areas, kinds of cover established, or management practices needed to achieve designated conservation benefits.

One way USDA can boost conservation benefits is by focusing increased outreach efforts in areas where continuous signup practices will have measurable impacts on natural resources. Those include, for example, buffer strips and filter strips in areas where surface water fails to meet state or federal standards, and existing and new Conservation Reserve Enhancement Program proposals. This includes efforts to address important fish and wildlife needs, such as the bobwhite quail habitat initiative, and the state acres for wildlife enhancement initiatives. While the level and kind of payments available under these programs is vital to enticing participants to enroll, on-the-ground experience has made it clear that a critical component of success is aggressive outreach to potential participants to explain the problems the initiatives are designed to address, and the benefits for participants who enroll.

6. Economic Uses Must be Consistent With Program Purposes

There appears to be growing pressure to make broader economic use of CRP lands, through haying, grazing, biomass harvest, or other practices. In many cases, active grazing or fire on an occasional basis is beneficial to maintaining grassland vigor. Occasional harvest for hay or biomass can also provide benefits for vegetation and wildlife, in the right circumstances. Other types of management, such as controlling invasive non-native vegetation, can also be important.

However, we note that haying or grazing are not automatically beneficial practices, and that the benefits provided by active management (whether haying, grazing, burning, or spot mowing) are very dependent upon the location and type of vegetation, rainfall, and the method, timing and frequency of the management. For example, in areas of the west where sagebrush in CRP is an

important component of habitat for wildlife like the sage grouse, haying the CRP field could cause a loss of sagebrush that could take years to recover.

The new Farm Bill includes section 2108, dealing with managed haying and grazing. For the most part, the language appears to authorize the types of managed haying and grazing that are already routinely permitted in Conservation Reserve Program contracts.

As we noted above, USDA rules for economic use of CRP lands must be consistent with the statutory purposes of the program: soil, water, wildlife, and addressing State, regional and national conservation initiatives.

USDA has already established standards for managed haying and grazing at the state level that take into account regional differences, and address stocking rates, frequency of haying or grazing, appropriate nesting seasons and other considerations. In 13 states, USDA is carrying out environmental impact assessments which are designed to determine the appropriate frequency of managed haying and grazing and, in two states, possible changes in the designated nesting season. Those were developed with input from the USDA State Technical Committees.

We believe this is the appropriate process for establishing managed haying and grazing standards for Conservation Reserve Program land, because it respects the requirements of federal law to carry out adequate environmental reviews before making agency decisions that will have an impact on wildlife and our environment. We urge USDA to continue to use this process, and to ensure that the standards remain true to the statutory purposes of the program: soil conservation, water quality, wildlife habitat, and meeting state, regional and national conservation initiatives.

7. Wind Turbines Must Honor Program Purposes

Section 2108 of the Farm Bill also permits the installation of wind turbines on CRP land, except that the USDA is required to “determine the number and location of wind turbines that may be installed,” taking into account, among other things, “the extent to which the land contains wildlife and wildlife habitat” and the purposes of the program.

In developing rules for the siting of wind turbines on CRP land, we urge USDA to take into account the various needs of birds and other wildlife that use CRP land or that could be put in danger by inappropriate siting of utility-scale wind turbines. In particular, USDA should establish state-level maps and criteria that identify areas where wind turbines are (and are not) acceptable. Those maps should exclude areas in key migratory bird paths, and in designated important bird areas. They should also exclude areas where CRP land is used by species like the Greater Prairie Chicken that require large, undisturbed areas of habitat, because research has shown that structures like wind turbines will impact those species.

The criteria should also include common sense provisions like installing wind turbines in corners and along edges of CRP fields so they cause the least disturbance to wildlife.

8. Monitoring, Research & Evaluation

Research and monitoring continues to document the many benefits of the Conservation Reserve Program, but further research is needed. We believe that the benefits of the Conservation

Reserve Program with respect to global warming/greenhouse gas sequestration is under-appreciated, and not as well documented as it needs to be. We urge USDA to undertake the monitoring and research needed to better understand and document the greenhouse gas impact of taking cropland out of production and putting it into the CRP.

There are a growing number of new uses of the CRP -- CREP projects designed to improve water quality or quantity situations, continuous signup practices designed to restore particularly valuable habitats, and new SAFE initiatives. We expect that those uses will continue to expand, and encourage USDA to undertake the monitoring, research and evaluation needed to understand and document the impact of the program in meeting the goals of these initiatives. We encourage USDA to undertake its own research and evaluation, or be willing to provide technical assistance funds to state or local agencies, educational institutions, or non-profit organizations willing to carry out monitoring, research, and evaluation of CRP impacts.

We look forward to a continuing discussion of these concepts. Thank you for the opportunity to comment on the Interim Rule with respect to the Conservation Reserve Program

Yours in Conservation,

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