

# 2019 CRP Rule, CREP & RFBs



# 2018 Farm Bill & Conservation Reserve Program (CRP)

- Despite low commodity prices and strong demand to participate in CRP
- Modest partial restoration of CRP – only 27 Million acres – and that only happens in year 5 of this farm bill (2023)
- Some positive CREP language
- To implement, FSA promulgates a CRP rule & issues guidance (notices, 2 CRP Handbook, fact sheets)

# CRP: 3 Ways to Renroll

- **Continuous CRP**: practices, like RFBs, that can sign up for at any time and have some special \$ incentives
- **CREP**: Targeted program combining state and federal payments to address a key resource issue, like Chesapeake Bay water quality. Typically provides highest \$ incentives
- **General signup**: usually held every year, producers submit offers, competitive process, ranked using Environmental Benefits Index (EBI)

# CRP Rule & Public Comment

- Interim final rule
- Published in Federal Register (**Friday, Dec. 6<sup>th</sup>**)  
<https://www.federalregister.gov/documents/2019/12/06/2019-26268/conservation-reserve-program>
- Very short public comment period (45 days) over the Holidays
- Public comment period ends **February 4, 2020**

# CRP enrollment dates

- **General Signup:** 1<sup>st</sup> general signup in past few years, accepting offers nationwide: **Dec 9, 2019-Feb. 28, 2020**
- Competitive process – rank offers using EBI (wildlife, erosion, water quality, enduring benefits, cost...)
- **CCRP:** enrollment began **Dec 9, 2019**
- **CREP:** reopening state by state, agreement by agreement

# Some key CRP program wide changes

- SRRs:
  - Productivity factor on SRRs (notice)
  - Annually updated (farm bill)
  - % reductions depending on whether GS or CCRP
- MCM
- Marginal Pastureland Rental Rates (MPL) – haven't been updated & there's no timetable (Notice CRP-883)
- Caps C/S on seeds at 50%

# General Signup Changes

- Allocation based on historic state acres (statute)
- 85% of SRR (statute)
- Per acre rental rate cap -- \$240/acre (notice)
- *Hard to predict the size of this GS because although commodity prices are down & there's pent up demand, the incentives are sharply lower*

# Continuous CRP (CCRP)

- Increased emphasis on CLEAR (water quality practices), including RFBs and saturated buffers
- *Sharply lower incentives:*
  - **5% PIP (notice)**
  - SIP = 32.5% of first year annual rental payment (statute)
  - No bonus on SRR (rule)
  - 90% SRR cap (statute)
  - Maximum \$300/acre annual rental payment (notice)



# CLEAR

- Clean Lakes, Estuaries and Rivers Initiative = CLEAR
- Priority for CLEAR: 40% of CCRP must be CLEAR (statute)
- BUT same incentives as the rest of CCRP
- *Likely is of limited interest in the Chesapeake Bay because CREPs provide better incentives*

# What does this mean for RFBs?

- CP22 = a CLEAR practice
- Slightly better than incentive package for CCRP the past two summers (no PIP), but 5% PIP is still harmful for practices like RFBs
- Remember, was: 40% PIP, 120% SRR & \$100/acre SIP
- **This is likely to be particularly harmful for practices, like RFBs, with high installation costs, especially on good soils**

# CLEAR 30 & RFBs

- Last year of contract – must be in pilot target area & an eligible conservation practice (*such as CP22*)
- 30 years of CRP annual rental payments
- Increased flexibility to do economic use – “periodic haying & grazing,” “managed timber harvest,” “hunting”
- FSA can delegate implementation/enforcement
- TA for NGOs, states, SWCDs...
- *This may be of interest in the Chesapeake Bay watershed*

# It's a good time to have CREP

- All 6 Chesapeake Bay states have CREPs
- Incentives are per CREP agreements
- Substantial cuts to CCRP & GS
- CREPs offer a badly needed alternative
- Thanks to Casey bill, there is very good language in the 2018 farm bill for RFBs and CREP



# CREP

- CREP Agreements in effect Dec, 2018 grandfathered in
- Incentives are per CREP Agreement (e.g., bonus on SRR for CP22)
- 32.5% SIP change may be automatically included if CREP Agreement language says paid in accordance with current FSA policy
- BUT looks like CREP amendment needed to include the good new 2018 Farm bill (Casey bill) provisions

# Need to Amend CREP Agreements?

- Statute – 30% match requirement if most of the non-federal match comes from NGO(s)
- Rule (1410.90(c)(1)) – waivable 30% match for any CREP – even existing CREPs
- Rule (1410.90(a)) – amend CREP Agreement to include new 2018 CREP provisions ~ are these pro forma amendments that would not trigger the 30% match issue?
- *Clarification of what this means*

# PIP – 40% or 5%?

- Not required by 2018 farm bill to lower PIP
- 1410.41(e) PIPs won't exceed 50% of the “actual cost” of installing the practice
- Notice CRP-889 cuts PIP from 40% to 5%
- Notice CRP-889 applies *solely* to CCRP non-CREP acres
- The 5% PIP should *not* apply to CREPs
- This is *very* important for Bay watershed, especially for MPL RFB enrollments

# CREP, MPL & Cost Share

- *“(2) MARGINAL PASTURELAND COST-SHARE PAYMENTS.—The Secretary shall ensure that cost-share payments to an owner or operator to install stream **fencing, crossings, and alternative water development** on marginal pastureland under a CREP **reflect the fair market value of the cost of installation**”*



# CREP, MPL & Cost Share

- ***Why is this important for Chesapeake Bay watershed?***
- Often C/S reimbursement caps are out of date and don't reflect actual current costs in the area
- This can be highly problematic in PA, NY, WV, VA, MD where C/S for alternate water, fencing, and crossings is a big part of the incentive to enroll in CREP RFBs

# CREP, MPL & C/S in the Rule?

- Notice CRP-887
- National practice caps for these components removed
- Approval of C/S “on a per component per contract dollar amount”
- level of review depends on component cost:
  - \$4,000 or less is approved by the FSA COC
  - \$4,001 to \$7,500 is reviewed by NRCS STC & FSA SED
  - Above \$7,500 is reviewed at the national level by DAFP/CEPD.

# Riparian Buffer Management Payments

- First time ever – *only* applies to CREP riparian buffers
- *Super high priority – combats issue of buffers that don't perform well & aren't eligible for reenrollment because weren't well maintained*
- *Win for landowners, the public, and the environment*

# Riparian Buffer Management Payments

- *“(4) RIPARIAN BUFFER MANAGEMENT PAYMENTS.—*
  - “(A) IN GENERAL.—In the case of an agreement under subsection (b)(1) that includes riparian buffers as an eligible practice, the Secretary **shall** make cost-share payments to encourage the **regular management of the riparian buffer throughout the term of the agreement, consistent with the conservation plan** that covers the eligible land.*
  - “(B) LIMITATION.—The amount of payments received by an owner or operator under subparagraph (A) **shall not be greater than 100 percent of the normal and customary projected management cost**, as determined by the Secretary, in consultation with the applicable State technical committee established under section 1261(a).*

# Riparian Buffer Management Payments

- Management
  - After establishment
  - **To maintain or enhance cover – is broader than MCM**
  - Consistent with conservation plan
- Management payments
  - Up to 100%
  - State Technical Committee (STC) role

# Riparian Buffer Management Payments in Rule

- 1410.90(e)(1) “an activity ... after the riparian buffer is established to regularly maintain or enhance only the vegetative cover throughout the CRP contract period in accordance with the conservation plan”
- 1410.90(e)(2) Management cost share payments will be made in accordance with CREP agreement
- 1410.90(e)(2)(ii) the management payment *is up to 100%* of the “**normal and customary cost** of such activity”

# MCM in PA

- Current approved MCM practices for CP22 in PA:
  - Prescribed mowing
  - Inter-seeding/Over-seeding
  - Inter-planting
  - Spraying Herbicide for Wildlife Benefit (previously known as “Spraying for Herbicide Only” in PA)
- PA NRCS has developed job sheets for all of the above
- *Unfortunately, 2018 farm bill mistakenly prohibits Secretary from providing C/S for MCM*

# What are Partial PIPs? Why so Important?

- Stream fencing, alternate water, crossings often crucial to RFB installation in Chesapeake Bay watershed
- Can take 2 years to fully install practice & certify before receive 40% PIP
- Much better farmer's cash flow if receive partial PIP as components are completed
- Big priority in Ches Bay RFB Task Force Recs (PA did not include because SED relied on state funded C/S)



# Partial PIPs & 2018 Farm Bill

- *“(3) COST-SHARE AND PRACTICE INCENTIVE PAYMENTS.— “(A) IN GENERAL.—On request of an owner or operator, the Secretary **shall** provide cost-share payments when a major component of a conservation practice is completed under a CREP, as determined by the Secretary.*
- Discretionary for USDA to determine what is a major component of the practice and when is it completed
- Mandatory for USDA to provide partial payments
- Caption includes PIPs but text doesn’t discuss (although arguably is included in cost-share payments)

# Partial PIP in rule?

- The rule (1410.40(g)) provides for PIPs for CCRP and CREP enrollments to be paid after the practice is fully installed
- Training – will pay partial PIPs for CREP in accordance with 2018 farm bill
- Need clarification about where this is (Rule? Notice? Other guidance?)

# Technical Assistance

- *“(2) TECHNICAL ASSISTANCE.—For the purpose of enrolling forested riparian buffers in a CREP, the Administrator of the Farm Service Agency shall coordinate with the applicable State forestry agency.”*

# Other RFB Provisions

- Language encouraging inclusion of food producing woody plants in RFBs & allows harvesting
- *Is in the rule but with reduction in rental payment*
- Only allows one reenrollment of hardwood trees, except RFBs and CREP forested wetlands
- *Exempts RFBs, CREP forested wetlands, bottomland hardwoods but includes longleaf pine*

# Temporary Waiver of Non-Federal CREP Match

- *(C) include procedures to allow for a **temporary waiver of the matching requirements** under subparagraph (B), or continued enrollment with a temporary suspension of incentives or eligible partner contributions for new agreements, during a period when an eligible partner loses the authority or ability to provide matching contributions, if the Secretary determines that the temporary waiver or continued enrollment with a temporary suspension will advance the purposes of this subchapter.*
- For example, this could help prevent CREP closures, like Delaware CREP a few years ago....

# Rule? Notice?

- Don't see where this is....
- Coming in future guidance?
- Ask for clarification

# Other Good CREP Provisions

- **New SRRs** – CREP partners can submit alternative proposed SRR – this is hugely important for Chesapeake Bay where often don't have robust farm rental markets
- Some discussion in Notice CRP-878, but not specifics re CREPs
- What will timeframe be?
- **Reenrolling acres – reduction in SRR:**
  - Only get 90% of SRR in CCRP
  - Only get 85% of SRR in general signup
- *But these restrictions can be waived for CREPs*

# Cost Share Cap

- The rule (1410.41(c)) a wide array of state/NGO incentives (C/S, rental or easement payments, tax benefits, “or other payments ... as an incentive to enroll lands in CRP”) as a form of cost-share
- 1410.40(d)(2) reduces total federal C/S (including PIP) so that farmers receive no more than 100% of practice establishment costs from all sources
- 1410.90(d) provides CREP exception: C/S payments, including PIP, can exceed 100% of the actual costs if “specifically authorized” by the CREP Agreement



# NRCS & FSA Consistency

- 2018 Farm Bill – directs agencies to be more consistent re C/S and payment rates
- Notice CRP-887 includes a rate consistency provision: “When establishing C/S rates, average costs for the same components should be the same regardless of the C/S program.”

# Summary for Chesapeake Bay

- Best opportunity by far is through CREP
- 2018 Farm Bill contains important improvements for RFBs & CREP
- Need clarification re what CREP Agreement amendments might be called for in each state
- Likely to know more soon....
- CRP rulemaking & STC meetings can have big impact on interpretation & implementation