

2018 Farm Bill, CRP Rule & Chesapeake Bay

CRP Rule & Public Comment Period

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

Interim Final Rule

- An interim final rule is *first published* as a final rule
- Interim final rules are *immediately* effective
- **But** with the opportunity for public comment at the time the rule is promulgated
- **Agency actively considers public comments & may make changes to the rule accordingly**

Public Comment & APA

- Like any rulemaking, subject to the Administrative Procedure Act (APA)
- Typically 30-180 day comment period, often 180 days (or more) for complex rulemakings
- Commenters can request longer comment period
- Purpose of rulemaking is to fill in details needed to implement the law and provides clarification
- Like any agency rule, must be consistent with the law it seeks to implement and Congressional intent

Judicial Review

- A reviewing court can consider whether a rule:
 - Is unconstitutional
 - Goes beyond the agency's legal authority
 - Didn't comply with the notice-and-comment process required by the APA or
 - Was arbitrary, capricious, or an abuse of discretion

NEPA & PEA

- National Environmental Policy Act (NEPA) requires an EIS for any major federal action significantly impacting the environment
- PEA = programmatic environmental assessment
- An optional tool for agency to determine if there is significant environmental impact
- Rules, permits, etc = major federal actions

Programmatic Environmental Assessment

- Discuss proposed federal action & environmental impacts
- Proposed alternatives, including no agency action & environmental impacts
- Public comment: Agency considers public comments and discusses them in the final PEA
- Decision: Finding of No Significant Impact (FONSI) or prepare an EIS

2019 CRP PEA

- Draft PEA limited discussion of 2018 Farm Bill changes to CRP:
 - Nationwide acreage cap: 24 to 27 million acres
 - Haying and grazing
 - CLEAR 30
 - SHIPP
- Only 2 options: proposed federal action & no action
- **Nov. 1, 2019, Issued final PEA & FONSI**
- Appendix B: table discussing public comments
 - 13 comments (2 individuals, 3 state & regional agencies, 7 NGOs)
 - Made a few changes (ex. added table of 2018 Farm Bill changes, updated list of CLEAR practices)
 - Did *not* expand alternatives considered & no significant impacts

Relationship of CRP Rule & CRP Notices

- CRP notices:
 - Policy documents
 - Limited time period in effect (e.g., a year of signup)
 - Not subject to public comment
 - Agency has discretion to waive, make exceptions
- CRP rule:
 - Has the force & effect of law
 - Remains in effect until changed by future rulemaking
 - Purpose is to implement the CRP provisions of 2018 Farm Bill

CRP Notices (so far...)

- CRP-891 (existing CREPs)
- CRP-890 (letters for expired CRP)
- CRP-889 (continuous CRP)
- CRP-888 (general signup)
- CRP-887 (cost share rates)
- CRP-886 (ACEP, WRE & 25% county cap)
- CRP-885 (reenrolling hardwood trees)
- CRP-884 (contract modifications)
- CRP-883 & CRP-878 (SRRs for FY20)
- CRP-882 (reporting CRP acres)
- CRP-881 (CREP annual reports)

FY 2020 CRP enrollment timeframes

- **General Signup**: 1st 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, *and* cost...)
- **CCRP**: enrollment began **Dec 9, 2019**
- **CREP**: enrollment began Jan x, 2020 for existing CREPs
- reopening state by state, agreement by agreement

What Are the Major Changes to CRP in 2018 Farm Bill?

2018 Farm Bill Provision	What does it change?	Comments
Nationwide CRP Acre cap	Raises from 24 million acres to 27 million acres	Over the 5-year farm bill; balance of CCRP, CREP & GS impacts environmental benefit & cost
Annual general signups & targets based on historic enrollment	Formerly at Secretary's discretion	Targeted enrollment based on historic geographical enrollment; Hadn't had GS in past few years (2015 Farm Bill cut size of CRP)
CCRP scope	Priority for CLEAR – at least 40% of CCRP	Does NOT require elimination of HEL, SAFE, etc CCRP initiatives
Incentives	SIP – 32.5% of first year rental \$ MCM C/S – eliminated SRRs – revised yearly; GS – 85% of SRR; CCRP – 90% of SRR	

2018 Farm Bill CREP provision	What does it change?	Comments
MPL C/S payments	Reflect fair market value of cost of installation	Important for grazers/dairy in Bay watershed because need help with cost of stream fencing, alternate water & crossings that reflects actual costs in area
Riparian Buffer Management Payments	<u>Brand new provision</u> : applies to post-establishment management & 100% C/S of “normal and customary management cost”	Is broader than MCM – maintenance or enhancement of cover post establishment consistent with conservation plan
Cost Share & Practice Incentive Payments (PIPs)	<u>Brand new provision</u> : requires USDA to provide partial PIP payment as major components completed if requested by farmer	This is important for Chesapeake Bay farmers, and others, because RFBs, and other complex practices, are expensive & may take 2 yrs to fully install
CREP partners & SRR establishment	<u>Brand new provision</u> : Expressly provides that CREP partners may provide alternate way to calculate	

2018 Farm Bill provision	What does it change?	Comments
Temporary waiver of non-federal CREP match	<u>Brand new provision</u> : Shall include language in CREP Agreements to allow temporary waiver of CREP match requirements (to advance CREP purposes, e.g., water Q, wildlife habitat, etc.)	Important in Bay (and nationally) – sometimes states run out of CREP match & this allows program to keep running; helps address abrupt stoppages; important for partners, farmer planning & environmental benefits
30% CREP match requirement if majority of match comes from NGOs	<u>Brand new provision</u> : Previously non-federal match was only 20% (at least ½ \$) & was only in policy	
CLEAR 30	<u>Brand new provision</u> : Participant can choose in last year of CRP contract if CLEAR practice & w/in target area	Extends CRP practice protection; Increased flexibility for economic use (managed haying & grazing, timber harvest, etc); role of NGOs (implementation, TA, etc)
Limits hardwood trees to 1 reenrollment	<u>Brand new provision</u> : Limits hardwood trees to 1 reenrollment except RFBs, forested wetlands & shelterbelts	Exemptions for RFBs & forested wetlands are important for Chesapeake Bay

2018 Farm Bill provision	What does it change?	Comments
Seed costs C/S	C/S capped at 50%	
Makes CRP lands eligible for reenrollment that couldn't reenroll in FY17 and FY18	Without this change, expired forested acres couldn't reenroll	Congress didn't address CRP acres that couldn't reenroll in FY19 because didn't foresee would take so long to reopen; Particularly important for tree practices.
Food producing plants on CREP buffers	Brand new provision	Note: the farm bill does NOT require any payment reduction
Prairie Strips	Adds as a brand new conservation practice in CLEAR	

Cost Share for CREP MPL Buffers

No language in CRP Rule

Notice CRP-887: Eliminated national C/S caps

3 tiered per component review

\$4,000 or less at local level;

more than \$4,000 and up to \$7,500 at state level;

More than \$7,500 at CEPD

Riparian Buffer Management Payments

- 1410.90(e) – tracks farm bill language
- How is this included in CREP agreements?
- Will there be a simple, quick way to amend?

Partial PIP Payments

- Not in the rule or the notices

Temporary Waiver of CREP Match

- No CRP rule language

Process re SRR Establishment

- Don't see anything in rule or notices re CREP partners
- What will process be?
- Sufficient time, notice, opportunity to comment?

30% NGO CREP Match

- 1410.90(a), 1410.90(c)(1)
- Creates a presumption of 30% match for States, Tribes and other NGOs unless negotiate otherwise?

“30 percent of the total cost of the project, unless a different amount is determined by negotiation between the CCC and the eligible partner with whom CCC is entering into the Conservation Reserve Enhancement Program agreement, if the majority of the matching funds to carry out the agreement are provided by one or more eligible partners that are not nongovernmental organizations.”

Grandfathering Provision

- 1410.90(a) – consistent with 2018 farm bill
- Notice CRP-891 CREPs in effect Sept 30, 2019 remain as is per CREP Agreements
- Unclear what happens when seek CREP amendment

CLEAR 30 Pilot

- 1410.80
- Where will target areas be?

Other Changes in Rule

- Treats PIP as a form of Cost Share
- SIP = 32.5% of 1st year rental payment (per farm bill)
- Requires commensurate cut if harvest food from RFB

Other Changes in Notices

- Cuts PIP to 5% for non-CREP CCRP
- Caps soil productivity on SRR
- Cuts 20% bonus on SRR for non-CREP CCRP
- Narrows focus of CCRP essentially to CLEAR practices

- *Much like narrowing of scope and cuts to incentives in FY18 & FY19*
- *Big impact: >70% decrease in enrollment*
 - *1.1 M acres in FY16 vs. roughly 300,000 acres in FY18 & FY19*

CRP Rule & Notices: CREP provisions

2018 Farm Bill Provision	CRP rule provision	CRP notice
30% CREP match requirements for NGO match	1410.90(a), 1410.90(c)(1)	<i>Applies to any new CREP but makes it waivable if non-NGO match</i>
	1410.41(e) PIP won't exceed 50% of actual cost of installing practice	CRP-889 cuts PIP from 40% to 5% for CCRP practices for FY20
Partial PIP: requires USDA to provide partial PIP payment as major components completed if requested by farmer	1410.40(g) PIP will be paid after practice is fully installed – <i>doesn't discuss CREP partial PIP</i>	<i>Don't see any language on this</i>
CREP MPL C/S payments	<i>No language?</i>	CRP-887 approval per component per contract; decided by local, state, national office depending on cost (\$4,000 or <; \$7,500 or <, or > \$7,500)

CRP Rule & Notices: CREP Provisions

2018 Farm Bill provision	CRP rule	CRP notice
Temporary waiver of non-federal CREP match	<i>No language?</i>	<i>No language?</i>
Riparian Buffer Management Payment	1410.90(e)	
Food producing woody plants on riparian buffers – can harvest	1410.90(e)(3) allows harvest but 1410.90(f) requires commensurate reduction in rental payment	
Grandfathering provision	1410.90(a) is consistent with farm bill language	CRP-891 essentially grandfathers in existing CREPs, keeping SIPs, PIPs etc all per current agreements unless the CREP partners seek an amendment

CRP Rule & Notices: CCRP

2018 Farm Bill Provision	CRP rule	CRP notice
CLEAR 30 – provisions track CRP rule	1410.80 Must be located w/in a pilot area & in a CLEAR or other WQ practice; last yr of CRP contract; 30 yrs of CRP rental payments; compatible economic use (managed haying & grazing, timber) consistent with cons plan	<i>Will there be a notice?</i>
Priority for CLEAR (at least 40% CCRP)	1410.30(b) CCRP will generally be limited to CLEAR practices	CRP-889 limits CCRP practices largely to CLEAR practices
Minimum enrollment (at least 8.6 M acres by 2023)		
SIP = 32.5% of 1 st yr CRP rental payment	C/S payments, including PIP, can't exceed 100% (1410.40(d)(2)); SIP = 32.5% of 1 st yr CRP rental payment (1410.45(b)(1))	CRP-889 incentives cuts: SIP = 32.5% of 1 yr rental; <i>PIP = 5% (not 40%);</i> <i>No 20% bonus on SRR;</i>

CRP Rule & Notices: General Signup

2018 Farm Bill	CRP rule	CRP notice
Annual general signups	1410.30(a)	CRP-888 (dates for FY20 GS)
Historic acreage allocations	<i>No language?</i>	<i>No language? Separate pools of EBI rankings?</i>
	1410.31 acceptability of offers?	
		Revisions to EBI to reflect SAFE acres, but no extra points for

CRP Rule and Notices: General Provisions

2018 Farm bill	CRP rule	Notices
Soil Rental Rate – NASS calculates every year	1410.42(b) weighted average soil rental rate (may include a bonus on SRR); can include a national rental rate cap; county rental rate schedule includes relative productivity of soils (1410.42(f); MPL based on estimates of prevailing rental rates of riparian MPL)	<p>CRP-889 and CRP-888 SRR caps of \$300 and \$240/acre respectively on CCRP and GS; CRP-889 no bonus on SRR; CRP-878 no enhancement for productive soils</p> <p><i>Note: MPL rates have not been adjusted in Chesapeake Bay watershed for many years</i></p>
Cost share	1410.41(b) Average cost may be determined by STC recommendations based on state or county or part there of	CRP-887: state or county offices review C/S rates & establish FY20 C/S rates
Midcontract Management – no C/S	1410.22(e) No MCM C/S	CRP-891 (CREP) & CRP-887

CRP Rule & Notices: General Provisions

2018 Farm Bill	CRP Rule	CRP Notices
	C/S payments, including PIP, can't exceed 100% (1410.4(d)(1), (2)) including C/S from other sources (like NGOs & States)	
	1410.40 (f) C/S for tree thinning to benefit wildlife habitat etc.	
	Permissive uses (wind turbines, etc); CCC may permit selling carbon, WQ or other credits 1410.63	
	Removes National Conservation Priority Areas; State can submit proposed state priority areas 1410.8(a)-(d) & expire after 5 yrs	

CRP Rule & Notices: General Provisions

2018 Farm Bill	CRP rule	Notices
	1410.62(f) May provide incentives for Tribes; beginning, socially disadvantaged, low income farmers; veterans; or “enhance long-term environmental goals”	
	1410.45(e) may provide incentives for “especially high environmental benefits” (i.e. bonus on SRR), subject to \$50,000 payment cap	For FY20, CRP-889 no bonus on SRR for CCRP enrollments and CRP-891 grandfathers in existing CREP incentives <i>unless amend the CREP</i>
Limits hardwood trees to 1 reenrollment	1410.6 Hardwood tree reenrollment	CRP-885 Treats Longleaf Pine as a hardwood