



CRS Report for Congress

Conservation Reserve Program: Status and Current Issues

Tadlock Cowan

Analyst in Natural Resources and Rural Development Policy
Resources, Science, and Industry Division

Summary

The Conservation Reserve Program (CRP), enacted in 1985, provides payments to farmers to take highly erodible or environmentally sensitive cropland out of production for ten years or more. It is the federal government's largest private land retirement program. The program is administered by the Farm Service Agency (FSA) of the U.S. Department of Agriculture (USDA), with technical assistance provided by USDA's Natural Resources Conservation Service. The CRP also has several subprograms, the best-known of which is the Conservation Reserve Enhancement Program (CREP).

The 2008 farm bill (P.L. 110-246) reauthorizes CRP through FY2012 but lowers the maximum acreage level to 32 million acres, down from the previous cap of 39.2 million acres. Haying and grazing conditions on CRP land are amended, and incentives are authorized to assist socially disadvantaged and beginning farmers in leasing or purchasing land under a CRP contract.

August 2008 national enrollment stands at 34.7 million acres, down approximately 2 million acres from September 2007. Most of this decrease was in North Dakota and South Dakota. USDA plans no general CRP sign-up in FY2008. A sign-up for critical feed use (CFU) haying and grazing was announced by USDA in May. A U.S. District Court issued a permanent injunction on July 24 against the CFU except for those who applied before a temporary restraining order issued on July 8. Between 2007 and 2010, 27.8 million acres under CRP contracts will expire. Contracts for approximately 23 million (83%) of these acres have been renewed or extended. This report will be updated periodically.

CRP General Background

The Conservation Reserve Program (CRP) is the federal government's largest land retirement program for private land. It was first enacted by Congress in 1985 to help control soil erosion, stabilize land prices and control excessive agricultural production. Since then, program purposes have been expanded to include environmental goals. The program is administered by USDA's Farm Services Agency (FSA), with technical assistance from USDA's Natural Resources Conservation Service (NRCS) and funding

from USDA's Commodity Credit Corporation (CCC). The FSA makes annual rental payments based on the agriculture rental value of the land, and provides cost-share assistance for up to 50% of the participant's costs in establishing various approved conservation practices (e.g., planting a cover crop on the land to reduce erosion). Participants enroll in CRP contracts for 10 to 15 years.

Participants bid to retire land from production for 10-15 years. Contracts are awarded by FSA based on their assessment of the land's environmental value using an Environmental Benefits Index (EBI). If the land is accepted, the landowner may enroll the land, receive annual rental payments for it, and maintain the land under an approved conservation plan. After a CRP contract expires, federal payments cease. If the land in question is "highly erodible" (about 75% of the land enrolled in the CRP meets this definition) and participants decide to return the land to production, they must manage this land under a NRCS-approved conservation system if they wish to be eligible for some federal farm programs (including commodity payments).

Enrolling in CRP

There are two types of sign-ups for enrolling land in the CRP: general and continuous. As of August 2008, there were 768,749 CRP contracts nationally on 431,085 farms (approximately 20% of all farms). The number of CRP contracts in September 2007 was 788,118 on 443,615 farms.

General Sign-up. General sign-ups are specified enrollment periods during which landowners compete nationally to enroll their land in the CRP. Nearly 88.2% of CRP acreage (30.6 million of 34.7 million) is enrolled through general sign-up. Applicants must meet certain eligibility criteria, evaluate their land according to FSA's Environmental Benefits Index, and submit bids to FSA for enrollment. FSA accepts applications that demonstrate the highest environmental benefits. These sign-ups are always competitive. For the CRP's most recent general sign-up (Number 33), which ran from March 27 to April 28, 2006, USDA selected 1 million acres of the 1.4 million acres offered. This most recently enrolled acreage includes about 673,000 acres of land located within conservation priority areas, about 629,000 acres with an erodibility index of eight or greater (highly erodible), and about 265,000 acres to be restored to rare and declining habitats.

Environmental Benefits Index (EBI). As the CRP has been expanded to include broader environmental goals, FSA has adjusted the categories and points awarded under the EBI. For example, FSA announced in June 2003 that, for the first time, it may award points to projects which have the potential to sequester carbon (reducing greenhouse gas emissions). Other factors include wildlife habitat benefits from planted cover crops, water quality benefits from reduced erosion, and whether benefits will endure beyond the contract period. Offers that included a willingness to accept less than the maximum rental rate for acreage as well as offers to reenroll land, may have received additional points. FSA ranks all applications nationally, and then sets an EBI score cutoff above which applications will be accepted.

Continuous Sign-up (includes Bobwhite Quail and Non-Floodplain Wetlands). Environmentally desirable land devoted to specific conservation practices with high environmental benefits may be enrolled in the CRP at any time for 10-15 years

under continuous sign-up.¹ Offers are automatically accepted (provided the land and producer meet certain eligibility requirements) and are not subject to competitive bidding. Contracts usually include additional incentive payments. Within the continuous sign-up program there are some options tailored to certain conservation needs, such as restoring floodplain wetlands and native hardwood trees in wetlands. On August 4, 2004, the Administration announced two more initiatives: a 250,000-acre initiative to restore bobwhite quail habitats in the Midwest and the Southeast, and a 250,000-acre initiative to restore wetlands located outside floodplains (including Great Plains playa lakes). There are currently 4.1 million acres enrolled under continuous sign-ups (including CREP acreage, discussed below). The 2008 sign-up added 282,000 acres to the CREP total.

Conservation Reserve Enhancement Program (CREP). This is a joint federal-state continuous sign-up program available in parts of 28 states. CREP targets geographic areas with agriculture-related environmental problems, such as Maryland's Chesapeake Bay and Florida's Everglades. Some states (e.g., New York and Ohio) have multiple CREPs, each targeting a different area of the state. USDA provides 80% of the funding, and a non-federal entity (typically the state) contributes the remainder. States may automatically enroll up to 100,000 acres. Unlike the general sign-up, CREP both encourages landscape-scale conservation efforts and offers the flexibility to address locally identified needs. As of August 2008, approximately 1.1 million acres were enrolled in CREP, nearly 100,000 acres more than in September 2007.

Farmable Wetlands Program (FWP). As authorized under the 2002 farm bill, farmable wetlands — those wetlands that have been partially drained, or are naturally dry enough to allow crop production in some years, but otherwise meet the definition of a wetland — may be enrolled in the CRP on a continuous basis. Up to 100,000 acres may be enrolled from any state (this may be increased to 150,000 acres after three years). The farm bill reserved one million acres for farmable wetlands enrollment. In August 2008, there were 182,267 acres enrolled, approximately 10,000 acres more than in September 2007.

Current Issues

2008 Farm Bill. The 2008 farm bill (P.L. 110-234) reauthorizes the CRP with a maximum acreage cap of 32 million acres, down from a cap of 39.2 million acres established in the 2002 farm bill (P.L. 107-171). The bill further directs the Secretary of Agriculture to give priority (where environmental benefits are equal) in contract bids to producers who reside in the county where the CRP acreage is located.

Rising food prices have put pressure on USDA to permit termination of CRP contracts without penalty. Secretary Schafer has reiterated his opposition to penalty-free terminations. If permission were granted in the future, issues would arise about the conditions under which the acreage releases should occur.

¹ Specific conservation practices include filter strips, riparian buffers, grass waterways, shelterbelts, field windbreaks, living snow fences, salt-tolerant vegetation, shallow water areas for wildlife, wetland restoration, and wellhead protection areas.

Managed Haying and Grazing. Managed haying and grazing are permitted activities under certain conditions. A disaster declaration, for example, may permit contract holders to harvest hay or to graze their cattle for certain periods. Where such activity is permitted, contract payments may be reduced. The 2008 farm bill modifies the managed haying and grazing regulation (Section 2108) to permit routine grazing to control invasive species under specific conditions and also permits the installation of wind turbines under certain conditions. When such activity is permitted, rental payments will be reduced by an amount commensurate with the economic value of the authorized activity.

Haying and Grazing for Critical Feed Use (CFU). On May 27, USDA announced that 24 million acres of CRP land could be used in 2008 for a critical feed use (CFU) program of managed haying and grazing following primary bird nesting season. This contract modification is restricted to the least environmentally sensitive land and will limit the scope and frequency of any managed haying and grazing. The National Wildlife Federation (NWF) and six state NWF chapters sought an injunction against USDA for failure to conduct an appropriate environmental review of the proposed CFU program. On July 8, the U.S. District Court for the Western District of Washington issued a temporary restraining order (TRO). On July 24, the court issued a permanent injunction suspending the CFU provision except for those who had been approved by or had applied to FSA prior to the TRO, or who had invested at least \$4,500 toward haying or grazing equipment and preparation prior to the TRO. Where the application was approved prior to the TRO, haying and grazing must be completed by November 10. For subsequent approvals, haying and grazing must end by September 30 and October 15, respectively. A Senate bill (S. 3337) requiring USDA to carry out the CFU under its original criteria was introduced July 25 and referred to the Committee on Agriculture, Nutrition, and Forestry.

Expiring CRP Contracts and Reenrollment and Extension Policy. Approximately 28 million acres under CRP contract will expire between 2007 and 2010. Contracts covering 5.9 million acres will expire in 2008, 3.4 million acres in 2009, and 1.6 million acres in September 2010. Approximately 83% of this expiring acreage has been reenrolled or had contracts extended as of August 2008. Of the 15.7 million contract acres that expired September 30, 2007, 13.6 million (86.6%) were approved for extensions or new enrollment contracts. Approximately 4.8 million of the 5.9 million acres expiring in 2008 also have extensions or new contracts (81.6%). Contracts were extended or renewed based on the Environmental Benefit Index (EBI) score and the land's location within national priority areas.² FSA ranked individual contracts into one of five tiers based on the environmental benefits of the original EBI score. Eligible participants ranking in the first tier (81%-100% of the EBI) could reenroll their land in new 10-year contracts. Farmers and ranchers in this top tier with wetlands enrolled were eligible for 15-year contracts. Only acreage under general sign-up contracts is eligible.

Contract extension ranges from two to five years. Eligible participants ranking in the second tier (61%-80% of the EBI) could extend their contracts for five years. Third-tier participants (21%-40% of the EBI) could receive three-year extensions. Eligible participants in the bottom tier could extend their expiring contracts by two years.

² National Priority Areas named in CRP authorizing legislation are the Chesapeake Bay, Long Island Sound, and the Great Lakes Region. USDA established two other national priority areas: Prairie Pothole Region in the Northern Great Plains, and Longleaf Pine Region in the southeast.

Participants with contracts expiring between 2008 and 2010 were also notified by FSA that they could choose to reenroll or extend by June 30, 2006. Of the 12.1 million acres expiring 2008-2010, 9.6 million (80.3%) have been approved for reenrollment or extension as of December 2007. Continuing high commodity prices could discourage some eligible producers from reenrolling or extending their contracts. Other producers, however, may judge the high commodity prices a temporary phenomenon and decide to reenroll or extend their contracts. Approximately 75% of the acreage expiring in 2010 has been reenrolled or extended. This compares to approximately 82% reenrollment and extension for acreage expiring in 2008 and 2009.

Contract Termination and Penalty Fees. Continuing high grain prices are appearing to make contract terminations attractive to some producers. Under current law, however, a producer wishing to terminate a contract early faces a penalty fee of 25% on rent payments paid, plus repayment, with interest, of all the funds already paid to the producer. This includes any cost-share payments. CRP acreage is also seen in some quarters as a potential resource for renewable fuel feedstocks.

On July 29, Secretary Schafer stated that there would be no penalty-free terminations. Penalties would apply to any contract holder who reenrolls or extends acreage and then decides to terminate the contract. An expiring contract that is extended and then later terminated would have penalties based on the original contract, not just the period since contract extension. Expiring acreage that is reenrolled is under a new contract and would incur penalties only on the period covered by the new contract.

Tax Status of CRP Payments. CRP rental payments are regarded by the Internal Revenue Service (IRS) as income from the business of farming. As such, they are subject to self-employment Social Security taxes. Producers, however, would like to treat CRP payments as rental income not subject to the self-employment tax of 15.3%. The IRS position was supported by the Sixth Circuit Court in March 2000 in *Wuebker v. Commissioner*, 205 F.3d897. In December 2006, the IRS issued Notice 2006-108 reinforcing its position that CRP payments are subject to self-employment taxes. Section 15301 of the farm bill exempts CRP payments from self-employment taxes for disabled and retired contract holders after December 31, 2007.³

Effects of the CRP on Local Economies. Retiring land in rural, largely agricultural economies could result in fewer farmers and fewer farming-related jobs in these areas. A USDA report found that, although high CRP enrollment was associated with some job loss in rural areas between 1986 and 1992 — the years the CRP was first underway — this was generally not the case during the 1990s. However, the report noted that national trends could mask regional adjustments, and that “local economic adjustments might be sizeable.”⁴ Losing existing CRP acreage or halting new enrollments may also have effects on local economies where hunting and fishing are important economic activities.

³ For more detail on the tax treatment of CRP payments, see CRS Report RS22910, *The 2008 Farm Bill: Analysis of Tax-Related Conservation Reserve Program Proposals*, by Carol A. Pettit.

⁴ U.S. Department of Agriculture, Economic Research Service Report to Congress. *The Conservation Reserve Program: Economic Implications for Rural America*. September 2004.

According to FSA data, the CRP had 34.7 million acres enrolled as of August 2008, including the various subprograms (e.g., Conservation Reserve Enhancement Program, Farmable Wetlands). This is a decline of 2.1 million acres over the total acreage enrolled in September 2007. By statute, CRP enrollment is capped at 25% of a county's cropland. Approximately 130 counties have at least 22.5% enrolled, although this can include counties with very small total acreage of cropland. Of these 130 counties, 80 have at least 25% enrolled. The farm bill exempts CREP from the county total cap.

Program Costs and Benefits

Acres enrolled in CREP, continuous enrollments, or the farmable wetlands program are generally eligible for higher payments than acres enrolled under general sign-ups because of their higher environmental benefits, location and prevailing rental rates, and additional financial incentives for participation. However, such contracts involve much smaller acreage on average. CREP payments average \$127 per acre and \$117 for the FWP, versus an average per-acre payment of approximately \$44 for the general sign-up acreage.

For FY2008, all CRP payments are estimated by USDA to be approximately \$1.8 billion. The Congressional Budget Office estimated CRP contract obligations would cost \$1.92 billion in FY2007 and \$2.4 billion annually through 2017. NRCS estimated that, prior to 2003, monetized CRP benefits (such as increased wildlife habitat and small game hunting) averaged about \$1.4 billion per year. This figure does not include non-monetized benefits such as improved groundwater quality and wetland restoration.

Rental Rates for CRP Acreage. The average rental rate for all CRP land was \$50.84 per acre in August 2008. Rental rates range from an average of \$44 for general sign-up acreage to \$127 for CREP acreage. CRP rental rates are based on the three-year average of local dry-land cash rental rates. Certain monetary incentives, such as an incentive to perform particular maintenance obligations, may also apply. CRP cost-sharing assistance is available to eligible participants for up to 50% of the eligible costs of establishing the approved practices.

The 2008 farm bill (Section 2110) directs USDA to conduct an annual survey of per-acre estimates of the average market dry land and irrigated land cash rental rates and to post these rates on a publicly accessible USDA Website.

CRP Environmental Results. FSA estimates that, compared with 1982 erosion rates, the CRP has reduced erosion by more than 454 million tons per year on the 34.6 million acres enrolled in the program. Through April 2006, CRP had also restored two million acres of wetlands and 2.5 million acres of buffers. Other conservation benefits NRCS has documented on these lands include the sequestration of more than 48 million metric tons of carbon annually; more than 3.2 million acres of wildlife habitat established; and a reduction in the application of nitrogen (by 681,000 tons) and phosphorus (by 104,000 tons). Also, participants have planted about 2.7 million acres to trees, making it the largest federal tree-planting program in history.