



National Sustainable Agriculture Coalition

July 13, 2010

Robert Stephenson, Director
Conservation and Environmental Programs Division
USDA Farm Service Agency
Stop 0513
1400 Independence Ave., SW
Washington, D.C. 20250-0513

Comments Submitted Via E-mail: cepdmail@wdc.usda.gov

RE: Comments on ***Conservation Reserve Program Transition Incentives Program Interim Rule***, 75 Fed. Reg. 27165 (May 14, 2010)(RIN 0560-A80).

Dear Director Stephenson:

These comments are submitted on behalf of the National Sustainable Agriculture Coalition (NSAC). NSAC is a national alliance of over 40 family farm, food, rural, and conservation organizations that together take common positions on federal agriculture and food policies to advance sustainable agriculture.

NSAC has a long track record of support for federal farm bill programs that promote conservation on agricultural working land and provide assistance to beginning or socially disadvantaged farmers and ranchers. Many of our member organizations conduct workshops for aspiring farmers and ranchers and operate Land Link programs to bring current farmers and ranchers together with aspiring farmers and ranchers.

The Coalition worked for inclusion in the 2008 Farm Bill of the new transition option for the Conservation Reservation Program (CRP) that combines these goals. Incentives to assist new farmers and ranchers in gaining access to land in the coming years are critically important. The 2007 Census of Agriculture found that the average age of U.S. farm operators increased from 55.3 years old in 2002 to 57.1 years old in 2007. The number of operators 75 years and older grew by 20 percent from 2002, while the number of operators under 25 years old decreased by 30 percent. In addition, many current farmers and ranchers have no relatives in the next generation who intend to take over the operation. The future of the nation's rural communities will depend on revitalizing the next generation with farm and ranch families living on the land.

The CRP Transition Option is a critical measure for aspiring farmers and ranchers who want to retain important conservation values on CRP land that is leaving the program and returning to agricultural production. NSAC is providing the following comments on the CRP Transition Incentives Program Interim Rule (CRP-TIP Interim Rule).

1. The Farm Service Agency should conduct effective, targeted outreach to link beginning and socially disadvantaged farmers and ranchers with landowners who have chosen not to renew CRP contracts.

The Statement of the Managers in the Conference Report for the 2008 Farm Bill states that the agency implementing the CRP-TIP should “*publicize the availability of the transition option widely, including publicity aimed at CRP landowners who are not extending contracts or re-enrolling in the program and at beginning and socially disadvantaged farmers or ranchers*” and should implement targeted outreach to where CRP re-enrollment and extension (REX) is declining or where contracts that were extended under REX are unlikely to be ultimately re-enrolled.

NSAC was concerned by the statement of FSA in the preamble to the Interim Rule that the agency was **not** establishing a formal program to match retired or retiring CRP landowners and operators with beginning and socially disadvantaged farmers and ranchers. Instead, FSA planned only to publicize the program to local FSA and CCC customers and “coordinate” with Farm Loan Program personnel to provide outreach to potentially eligible farmers and ranchers. This suggested that FSA did not intend to take even minimal efforts for outreach beyond its “business as usual” dealings with established commodity program crop farmers.

We note with appreciation that the May 14 Notice CRP-659 to State and County Offices included instructions to publicize TIP through press releases and newsletters and particularly the instruction to plan targeted outreach jointly with partner organizations who target beginning and SDA farmers and ranchers.

We were further heartened by the opening remarks of USDA Secretary Vilsack before the Senate Committee on Agriculture, Nutrition & Forestry at a hearing on June 30, 2010, which emphasized and acknowledged the role that USDA can and must play in the 2012 Farm Bill to encourage and assist the establishment of new farmers and ranchers on small and mid-sized operations across the nation. In a follow-up letter to NSAC from Secretary Vilsack dated July 8, 2010 (and attached to these comments), the Secretary reiterated the points from the May 14 Notice but also added a new point discussing TIP NET:

(1) FSA State and County Offices have been directed to conduct outreach activities to ensure the participation of beginning and socially disadvantaged (SDA) farmers and ranchers.

(2) FSA offices have been required to ensure – using all available means – that beginning and SDA groups are informed of the opportunities under TIP and that FSA state offices have been directed to prioritize efforts to plan targeted outreach activities jointly with partner organizations whose mission specifies service to beginning or SDA farmers or ranchers

(3) FSA is also working on TIP NET, a website that will be available so that retire and retiring owners or operators and beginning and SDA farmers or ranchers may connect online and post when land is available or needed for enrollment through TIP.

We are pleased these steps outlined in the Notice and the Secretary's letter go beyond the weaker outreach effort suggested by the preamble to the CRP-TIP Interim Rule. As we have noted previously, several NSAC member organizations will be happy to assist FSA with these efforts.

In addition to the steps outlined by the Secretary, NSAC makes the following recommendations to FSA to help achieve targeted and effective outreach and implementation of the CRP-TIP:

- FSA should immediately develop cooperative agreements with NGOs for specific outreach to CRP contract holders and to beginning and socially disadvantaged farmers and ranchers in CRP-heavy areas.
- FSA should send out mailings to existing contract holders that include FSA and NGO contact information for further assistance or information. NSAC agrees that the TIP NET could be a good tool for some CRP landowners but many retiring landowners, especially in their late sixties or seventies, may not routinely use the internet.
- FSA should post in their offices a map of the land in that county, identifying which parcels are in CRP and are due to come out, identifying the year it is set to come out. This would help BFR and SDA farmers identify land that could be transitioned.
- FSA CRP-TIP should work intensively with FSA BFR and SDA ownership and operating loan programs, including the Down Payment and Participation programs, to help the new BFR or SDA owner or operator buy the land or finance the farming or ranching operation. Both the Farm Loan Program Loan Making Division and the Farm Program Conservation and Environmental Protection Division should include information on the transition option in its materials, newsletters, webpages, etc. and in offices in states and counties with significant CRP enrollment. These materials should describe how loan programs can provide assistance.
- FSA should coordinate with the Agricultural Marketing Service National Organic Program (NOP) and ensure they have materials to post on their website and to share with certifiers and producers in the NOP system. FSA should encourage NOP to send the materials to all certifiers and to all accredited certifying agencies and organizations.
- FSA should coordinate with NRCS and ensure they have materials to post on the CSP and EQIP websites and to share with farmers and ranchers making inquiries about using the transition option in conjunction with CSP or EQIP.
- FSA should ensure that the CRP transition option is on the agenda of all State Technical Committees in States with significant CRP enrollment.
- FSA should coordinate with the new Office of Outreach and Advocacy and with the Small Farm and Beginning Farmer and Rancher Council in developing and implementing plans to reach out to beginning and socially disadvantaged farmers and ranchers.
- FSA should do outreach to state agencies which have conservation or environmental cost-share funds, especially funding that could be applied retroactively for conservation work done

while that land is under the CRP contract, as long as the conservation work does not interfere with the CRP conservation plan. For example, the Clean Water Act Section 319 program is used in some states to establish infield watering systems to keep livestock out of riparian habitat. The decision of whether to work with a state agency should be a mutual decision of the CRP owner or operator and the new farmer or rancher.

NSAC also recommends that USDA consider the development of CREP Agreements with states to help facilitate the CRP Transition Option with permanent easements which could decrease the cost of the land to the new farmer or rancher, increased CCRP enrollments, and state payments for organic certification which could result in an overall increase in the environmental and conservation performance of agricultural operations on land coming out of CRP contracts to protect wildlife habitat, water resources and other significant natural resources.

2. NSAC urges FSA to rescind the language of Section 1410.64(f) of the Interim Rule and the provisions of Notice CRP-659 under which FSA is prohibiting enrollment in TIP of retired owners and operators with CRP-1's that expired on September 30, 2008 and September 30, 2009, if the land has been sold or leased before the signing of a CRP-1R (the CRP-TIP contract).

NSAC urged FSA for two years after the enactment of the 2008 Farm Bill to get the CRP-TIP implemented in a timely fashion so that the program would be available on the millions of CRP acres that were coming out of CRP contracts in 2008 and 2009. FSA did not issue the Interim Final Rule until May 14, 2010.

We appreciate the fact the Interim Rule provides for retroactive application of TIP in cases where the land has not be sold or leased. However, in our view this does not go far enough.

In the passage of time from the farm bill becoming law in June 2008 and issuance of the rule in May 2010, some landowners with expiring CRP contracts took a chance on selling or leasing their CRP land to a beginning or SDA farmer or rancher who wanted to use sustainable and organic farming and grazing practices. Now these landowners find that they are barred from the CRP-TIP because of the FSA interpretation that the program's primary intent is to facilitate the transfer of the CRP land.

This FSA viewpoint of the CRP-TIP has two significant flaws. First, it penalizes those very landowners who were willing to go forward with a sale or lease to a beginning or SDA farmer in hopes that the CRP-TIP would be implemented on a timely basis. Prohibiting these landowners from participation penalizes those landowners who stepped up and ensured that a beginning or SDA farmer or rancher could get access to land. Rather than being penalized, these are the landowners who should be permitted to enroll in the CRP-TIP as its very first users.

Second, this restrictive FSA viewpoint on retroactivity ignores the conservation benefits of the CRP-TIP for the beginning or SDA farmer and rancher. These include the opportunity to enroll in the Conservation Stewardship Program and the Environmental Quality Incentives Program, to reenroll applicable partial field practices in the CCRP, and to develop a conservation plan. Instead, as with the former CRP landowner, the new farmer or rancher who wants to enroll in the

CRP-TIP to start off on a sound conservation basis is penalized for taking the opportunity to lease or purchase former CRP land during almost two years it took FSA to implement the CRP-TIP.

NSAC sees no public interest that is served by FSA denying the opportunity to enroll in the CRP-TIP to any former CRP landowner and new farmer or rancher who implemented suitable grazing or cropping methods or initiated the certification process under the National Organic Program. FSA should not be able to rely on its own delay in implementing the program to bar access to the program to CRP landowners and beginning and SDA farmers who made a good faith effort to establish the agricultural systems required by the CRP-TIP.

3. NSAC urges FSA and NRCS to provide for an expedited process and special rules to make the opportunity for the new farmer or rancher to enroll in CSP and/or EQIP real.

NSAC is concerned that the Interim Final Rule does not provide for the expedited procedures for the new operator to enroll in CSP, EQIP, or both, depending on the particular operation and circumstance. The 2008 Farm Bill provides that beginning or SDA farmer or rancher have “... an opportunity to enroll in the Conservation Stewardship Program or the Environmental Quality Incentives Program by not later than the date on which the farmer or rancher takes possession of the land through ownership or lease.”

But the Interim Final Rule at Section 1410.64(d) provides that beginning or SDA farmers or ranchers be eligible to enroll in the CSP or EQIP provided that their offer to enroll meets “all program conditions.” This language provides little guarantee that the new farmer or rancher will actually be enrolled in the EQIP or CSP. Clearly, the beginning or SDA farmer or rancher must meet all program requirements, but the Interim Rule does not contain any expedited procedural mechanism to ensure the opportunity to enroll at date certain.

NSAC recommends that NRCS establish an expedited process for TIP participants to enroll in EQIP or CSP and that the expedited process become part of the TIP final rule, including special rules to allow the application process to begin prior to the applicant taking control of the land. Without a special exception to rules requiring control of the land before the application process can begin, there will be no effective way for the Farm Bill mandate to enroll by the date the new farmer or rancher takes possession of the land through ownership or lease. This special expedited process should be included in the final rule for CRP-TIP and cross-referenced in the NRCS program manuals for EQIP and CSP.

NSAC also recommends that NRCS establish substantial ranking points for EQIP enrollment to applicants who hold land through the CRP-TIP to ensure that the beginning farmers and ranchers have a real chance of enrolling rather than being placed on the waiting list. For CSP, NSAC recommends that NRCS create special CMT baseline inventory points to credit the conservation values that will be maintained through TIP, even though the new operator will not have a production or conservation history on the land. These two measures should also be included in the final rule for CRP-TIP and cross-referenced in the NRCS program manuals for EQIP and CSP, respectively.

The best outcome for CRP-TIP is that the win-win situation of new farmers and ranchers starting out with conservation assistance and resources to retain many of the conservation values of the former CRP land.

4. Additional Recommendations for CRP-TIP Interim Rule Modifications.

Timing of conservation improvements: Notice CRP-659 specifies that no conservation and land improvements will be permitted in the last year of the CRP contract during the primary nesting season unless the cover was already disturbed because of allowable land improvements started before the first day of the primary nesting season. NSAC urges FSA to modify this restriction to permit such conservation and land improvements without regard to the nesting season timeframe for any improvement that will not have a significant impact on nesting wildlife. For instance, surveying, fence installation, installing wells, and ceasing any activity for purposes of becoming eligible for organic certification would in most instances have no significant impact.

Sustainable grazing methods: NSAC recommends that Interim Rule be modified to provide a definition in the definition section (1410.2) for the term “sustainable grazing methods” that means site specific application of the NRCS conservation practice standard 528 for Prescribed Grazing, plus such other pasture and range management and vegetative practices as may be determined by NRCS working with the new operator to apply to a particular operation.

Sustainable crop production methods: NSAC recommends that the Interim Rule be modified to provide a definition in the definition section (1410.2) for “sustainable crop production methods” that means site specific application of NRCS conservation practice standards for Conservation Crop Rotation (328), Cover Crop (340), Nutrient Management (590), and Pest Management (595), and such other land management or vegetative practices that may be determined by NRCS working with the new operator to apply to a particular operation, including any relevant conservation buffer practices (contour grass strips, field borders, grass waterways, filterstrips, riparian buffer strips, cross wind traps, etc.).

Conservation plan: The Interim Rule states that beginning or SDA farmer or rancher must implement a sustainable grazing or crop production system in compliance with the conservation plan by the time specified in the plan” (1410.64(b)(3)). NSAC recommends that the conservation plan should follow the planning process spelled out in Part 600.2 of the NRCS National Planning Procedures Handbook, should be at least 5 years in length to allow for progressive implementation, and should require that the sustainable grazing or sustainable crop production system be in place by the end of the two-year transition agreement.

CCRP re-enrollment: NSAC recommends that FSA work closely with NRCS to encourage the new farmer or rancher to enroll or re-enroll relevant partial field conservation practices through the continuous CRP. FSA should team with NRCS in doing specific outreach on the CCRP option. This is particularly important for land that went into the CRP because of its adverse impact on water quality while in agriculture production.

Timing of sale or lease: NSAC agrees that enrollment in TIP of land expiring in any given year should occur by September 30 of that fiscal year, but we recommend that FSA provide for optimum flexibility so that if sale or lease arrangements for the expiring CRP land are not finalized precisely on the date of termination of the CRP contract that there is a reasonable grace time period of several months for legal arrangements to be finalized; in the interim a letter of intent should suffice for enrollment purposes. It would be helpful if this flexibility were written into the Final Rule or into a revised Notice.

Require that leases on land enrolled in the CRP-TIP include a grant of the right of first refusal to the beginning or SDA farmer or rancher if the landowner decides to sell the land rather than renew the lease: NSAC supported the Section 1410.64(a) requirement that land leased under the CRP-TIP must be leased under a nonrevocable lease of at least 5 years in length. We further recommend that the CRP-TIP regulations require the inclusion of a right of first refusal to the beginning or SDA farmer or rancher if the landowner decides to sell the land at the end of the term of the lease. This right will not allow newly established farmers or rancher to dictate a price for the land but will give them the opportunity to enter into an arms length negotiation with the landowner over a sales price for the land. This will result increased economic stability for the new farmer or rancher as well as increased social stability for the rural community in which the farm or ranch is located.

Thank you for considering our comments.

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