

**Revision to the Agreement
Between
The Commonwealth of Pennsylvania
And
The United States Department of Agriculture
Commodity Credit Corporation
Concerning the Implementation of the Pennsylvania
Chesapeake Bay Conservation Reserve Enhancement Program**

I. PURPOSE

This revised Agreement (henceforth, "Agreement") is entered into between the United States Department of Agriculture's (USDA) Commodity Credit Corporation (CCC), and the Commonwealth of Pennsylvania ("The Commonwealth" or "Pennsylvania") to revise the Conservation Reserve Enhancement Program (CREP) for Pennsylvania's Chesapeake Bay (see project area map in Exhibit 2). This CREP is directed at reducing nutrient and sediment loading of the Upper and Lower Susquehanna and Potomac River Basins, improving water quality, enhancing wildlife habitat, and producing nutrient reductions established under the Chesapeake Bay Agreement. In this Chesapeake Bay CREP agreement, obligations of the Commonwealth are limited to powers and authorities of the Governor of Pennsylvania.

This Agreement supersedes all earlier CREP Agreement provisions between USDA, CCC and The Commonwealth regarding the Upper and Lower Susquehanna and Potomac River Basins. For all existing Conservation Reserve Program (CRP) contracts enrolled into this project before this Agreement is approved and implemented, the earlier Agreement provisions will continue to apply and be adhered to between USDA, CCC and the Commonwealth during the life of those CRP contracts. All acreage enrolled under the earlier CREP Agreement provisions will also be cumulatively applied to the total project acreage ceiling established under this new revised agreement, per Section IV. A. herein.

II. GENERAL PROVISIONS

As the largest estuary in the United States and one of the most productive in the world, the Chesapeake Bay is a resource of State and National significance. The Susquehanna and Potomac Rivers are the Commonwealth's major tributaries to the Chesapeake Bay. The Susquehanna River is the largest single source of freshwater to the Chesapeake Bay, and as such, is also the largest single source of nutrients (including nitrogen and phosphorus) to the Bay.

References in this document to “other special conservation practices” refer to those CRP conservation practices, referred to in FSA CRP National Directives, which are known by designations “CP8A, CP9, CP15A, and CP23” except that with respect to CP23, “other special conservation practices” will not include riparian protection practices, as those practices are handled under a separate heading in this Agreement. In this Agreement, the term “HEL” refers to highly erodible land.

It is the intent of USDA, CCC and the Commonwealth that, when fully enrolled, this Chesapeake Bay CREP helps address and achieve the following objectives in the 43 county target area in the Commonwealth’s Susquehanna and Potomac watersheds identified on the map attached to this agreement:

1. Permit the Commonwealth’s producers to voluntarily restore wetlands, riparian areas and grasslands by enrolling up to 219,746 acres of farmland into the Chesapeake Bay CREP, through financial and technical assistance.
2. Reduce erosion on cropland in the Chesapeake Bay watersheds by an estimated 3.5 million tons using April 22, 2000, as the beginning of the base period for measuring erosion reduction levels.
3. Prevent 72,500 tons of sediment, and 4.4 million pounds of nitrogen and phosphorus from reaching the Chesapeake Bay using April 22, 2000, as the beginning of the base period for measuring erosion reduction levels.
4. Restore and enhance riparian habitat corridors next to streams, estuaries, wetlands and other watercourses by seeking to enroll at least 31,746 acres of buffers, grass filter strips, and wetlands.
5. Restore and enhance grassland habitats for declining grassland dependent wildlife and improve water quality by seeking to enroll 188,000 acres of highly erodible cropland in conservation cover plantings.
6. Improve the water quality and restore damaged riparian areas of the Susquehanna and Potomac Watersheds to facilitate the health of fish, game, and other wildlife populations.

The intended outcome of this Agreement is to enhance the ability of producers to enroll certain acreage under the CRP, where deemed desirable by USDA, CCC, and the Commonwealth. This Agreement is not intended to supersede any rules or regulations which have been, or may be promulgated by USDA, CCC, or the Commonwealth.

III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. 3830 et Seq.) and the regulations at 7 CFR Part 1410 to perform all its activities contemplated by this Agreement.

The authority of the Commonwealth to enter into this Chesapeake Bay CREP are Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 17 of the Dam Safety and Encroachment Act, 32 P.S. § 693.17; Section 852 of the Conservation District Law, 3 P.S. § 852; and Sections 2, 4, and 5 of the Nutrient Management Act, 3 P.S. § 1702, 1704, and 1705.

IV. PROGRAM ELEMENTS

USDA, CCC, and the Commonwealth agree that:

- A. The Chesapeake Bay CREP will consist of a special continuous sign-up CRP component and a Commonwealth incentive program. The Chesapeake Bay CREP will seek to enroll in the CRP 219,746 acres of environmentally sensitive acreage in 43 counties of the Chesapeake and Potomac Watersheds, in areas where water quality may be adversely affected by agricultural practices. These enrollments are intended to improve water quality and provide habitat for declining grassland, riparian, and wetland dependent plant and animal species.
- B. Land may, on a continuous basis, be enrolled in the program if it meets CRP cropping history and land ownership requirements, land eligibility criteria, and any other Chesapeake Bay CREP or CRP criteria set forth in this Agreement or the 1985 Act and the CRP regulations, as well as the Chesapeake Bay CREP State supplement to FSA CRP National Directives operating procedures. Changes in land eligibility criteria will require a concurrence in writing by the parties to this Agreement, except for the tolerances specifically provided for in section IV.(D)(1)(c) of this Agreement.
- C. Conservation plans for the land enrolled must meet or exceed the minimum criteria of the following CRP practices and of the applicable Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), and FSA CRP National Directives operating procedure. The eligibility criteria described in part D. of section (IV) must be used to determine which land in the 43 Chesapeake Bay counties may be enrolled in this CREP, but the practice criteria specified in this section will govern the conservation plans that must be developed on these lands, and the plan must meet one of the following practice specifications, in order to receive compensation for those practices; the following practices will be eligible for enrollment in the 43 counties of the Chesapeake Bay CREP after the approval date of this revised Agreement:

1. For cropland enrolled for the purposes of retiring HEL, or protecting HEL, or re-enrolling HEL:
 - CRP Conservation Practices: CP1, CP2, CP4D, and CP12.
2. For cropland and certain marginal pastureland enrolled for the purposes of installing or re-enrolling riparian protection and other special conservation practices:
 - CRP Conservation Practices: CP8A, CP9, CP15A, CP21 (on cropland only), CP22 (on both cropland and marginal pastureland), CP23, (on cropland only), CP29, CP30 (on marginal pastureland only), and CP33 (on cropland only).

The practices referred to above must meet the criteria of the applicable NRCS-FOTG and FSA CRP National Directives procedures, but may include structural measures as appropriate.

D. The following enrollment criteria, in addition to other applicable CRP criteria, will apply, as determined by CCC:

1. To be enrolled, a field or part of a field otherwise eligible for this CREP must have a weighted average Environmental Index (EI) of 12 or greater except that, as determined by CCC:
 - a. If the land is predominately (at least 51%) within 180 feet of a stream or other permanent water body, no minimum EI will be required.
 - b. If the land is predominately within a distance of greater than 180 to 1000 feet from a stream or other permanent water body, the land may be enrolled if the EI is 8 or greater.
 - c. Croplands to be enrolled in riparian protection and the following "other special conservation practices" will not have a minimum EI: CP8A; CP9; CP15A; CP21; CP22; CP23; CP29; CP30; CP33.
 - d. For the purposes of this CREP, cropland devoted to a perennial crop, as determined by CCC, will be eligible for enrollment as authorized by 7 CFR 1410.6(a)(13).

E. The following special criteria will apply to the Chesapeake Bay River Basin CREP and to the relationship between it and CRP:

1. Implementation of conservation practices must be consistent with the FSA CRP National Directives operating procedure guidelines except that practice CP-29, Marginal Pastureland Wildlife Habitat Buffer, for the purposes of this CREP, must have a minimum acceptable width of 35 feet, as determined by CCC.
 2. To encourage reproduction of grassland-dependent wildlife, maintenance mowing on the Chesapeake Bay CREP land will not be permitted during the primary nesting season as established by CCC, except as specifically permitted by CCC.
 3. All contracts for land enrolled in this CREP will have a contract length of not less than 10 years and not more than 15 years regardless of the practice enrolled.
- F. Eligible producers will not be denied the opportunity to offer eligible acreage for enrollment during other CRP enrollment periods.
- G. CRP contracts executed under this Agreement must be administered in accordance with CRP regulations at 7 CFR part 1410, and the provisions of this Agreement and any conditions required by the Commonwealth. In the event of conflict, the CRP regulations will prevail.
- H. No lands may be enrolled under this program until both the USDA's CREP Program Manager approves a Commonwealth amendment to the FSA CRP National Directives operating procedure which provides a description of this program and its applicable practices, and the appropriate level of environmental analysis has been completed as required by the National Environmental Policy Act of 1969, as amended, related Statutes, Executive Orders, Departmental Regulations, and in accordance with 7 CFR Part 799.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Pay 50 percent of the reimbursable costs of conservation practices. Reimbursable costs paid to the eligible producer, from all sources, will not exceed 100 percent of the producer's eligible out-of-pocket expenses.
- B. Enroll lands that meet the eligibility criteria with the designated practice specification on a continuous basis in accordance with the general purposes and terms of the CRP as defined elsewhere in this Agreement.

C. Make annual rental payments under CRP. The rental payments will be the sum of the base soil rental rate plus an incentive payment plus the annual maintenance rate (if applicable according to FSA CRP National Directives). The base soil rental rate for a parcel offered under the Chesapeake Bay CREP will be the weighted average of the posted CRP county soil rental rates for the three predominant soils offered on a parcel for enrollment or re-enrollment. In addition, land designated as infeasible to farm as defined in FSA CRP National Directives will be eligible for payment consistent with the procedures outlined in FSA CRP National Directives.

The incentive payment for land enrolled under this CREP must be in accordance with the following:

1. For land enrolled as HEL practices CP1, CP2, CP4D, and CP12 the incentive rate will be:
 - 0.75 times the applicable base soil rental rate (SRR) for land with $8 \leq EI \leq 12$
 - 1.5 times the SRR for land with $12 < EI \leq 20$
 - 1.75 times the SRR for land with $20 < EI \leq 25$
 - 2.0 times the SRR for land with $25 < EI \leq 30$
 - 2.25 times the SRR for land with $30 < EI$.
2. For land enrolled as riparian protection and other special conservation practices CP8A, CP9, CP15A, CP21, CP22, CP23, CP29, CP30, and CP33 the incentive rate will be 1.5 times the applicable base soil rental rate.
3. These incentive payments will be considered to be, and treated as, a rental payment for payment limitation purposes.

D. Administer CRP contracts for lands approved under the Chesapeake Bay CREP.

E. Work cooperatively with the Commonwealth, as set forth in FSA CRP National Directives and CREP supplement to 2-CRP, in the development or review of conservation plans for applicants offering to enroll eligible acreage in the Chesapeake Bay CREP.

F. Conduct required spot checks and status reviews to ensure compliance with the CRP contract.

G. Provide information to landowners and operators concerning Chesapeake Bay CREP and technical assistance for implementing the Chesapeake Bay CREP in general.

- H. Permit successors-in-interest to the Chesapeake Bay CREP contracts in the same manner as allowed for other CRP contracts.
- I. Subject to the availability of funds, pay eligible producers who enroll in certain practices Signup Incentive Payments (SIP) and Practice Incentive Payments (PIP), as provided in FSA CRP National Directives. These incentive payments will be considered to be, and treated as, a rental payment for payment limitation purposes.

VI. STATE COMMITMENTS

The Commonwealth agrees to:

- A. Seek applicants willing to offer eligible and appropriate land for enrollment in the Chesapeake Bay CREP.
- B. From the date of approval of this revision to the Chesapeake Bay CREP, will pay costs associated with the establishment of CREP conservation practices in all 43 counties of the Chesapeake Bay CREP, up to an amount displayed in Exhibit 1, for certain CREP practices, outlined as follows:
 - 1. Practices CP1, CP2, CP4D, CP8A, CP15A, and CP33, if any of the following apply:
 - a. The participant agrees to enroll all areas eligible along the riparian corridor on the enrolled tract in practice CP22 and/or CP29 at a minimum of 50 feet from the bank; or
 - b. The participant signs an agreement to maintain existing and functioning (per NRCS criteria) riparian forested buffers if all water bodies are already buffered on the offered tract; or
 - c. The participant has no water bodies on the offered tract but has water bodies on adjacent tract(s) and signs an agreement to maintain all existing and functioning forested buffers or enroll all eligible areas in CP22 and/or CP29 at a minimum width of 50 feet from the bank on all tracts adjacent to the offered tract; or
 - d. The participant has no water bodies on offered tracts or adjacent tracts.
 - 2. Practices CP22 and/or CP29, when enrolled in the Chesapeake Bay CREP on any eligible acres with a minimum distance of 50 feet from the top of the bank, and in the case of CP29, no mowing is done within the first 50 feet from top of bank; or
 - 3. Practice CP23, when enrolled in Chesapeake Bay CREP on any eligible acres.

Any costs, up to a maximum of 50 percent of the cost of establishing the practice, paid by the Commonwealth, are subject to the technical requirements and suitability of a proposed site such as EI, distance from a stream or wetland, the extent of the conservation practice, the level of general program demand and interest, its cost share program funding limitations and a participant's participation in a coordinated Commonwealth program providing cost share for conservation practices, as determined by CCC.

- C. Pay costs associated with funding technical and engineering positions, up to maximum reimbursement levels consistent with its Chesapeake Bay program, to assist producers with reducing non-point source pollution within the 43 counties affected by the Chesapeake Bay CREP. These staff will assist in the development of nutrient management programs, and provide education for intended persons. Staff engineers will facilitate the planning, design, layout and implementation of the Best Management Practices (BMPs) producers choose to implement.
- D. Pay costs associated with Pennsylvania Game Commission and Pennsylvania Fish and Boat Commission efforts to develop fish and wildlife habitats in the 43 county regions to enhance the positive soil and water effects of the lands retired through the Chesapeake Bay CREP.
- E. Pay costs associated with grant and loan programs for producers to implement approved nutrient management plans developed through the Commonwealth.
- F. Pay costs associated with environmental monitoring programs within the 43 county region.
- G. Pay costs associated with developing a public outreach program.
- H. Pay costs associated with providing other technical assistance, as necessary, through appropriate Commonwealth agencies, including County Conservation Districts, Pennsylvania Game Commission, Department of Environmental Protection, Pennsylvania Department of Agriculture field staff, Department of Conservation and Natural Resources, and the Pennsylvania Fish and Boat Commission, and to develop conservation plans for applicants offering to enroll eligible acreage in the Chesapeake Bay CREP.
- I. Commit to pay 20 percent or more of the costs of implementing this program during the life of the program in efforts to improve water quality, reduce nutrient and sediment loading in 43 counties, and improve fish, game and wildlife habitat. The Commonwealth may credit funds expended through existing programs accomplishing the same program goals and objectives, as well as funds expended by non-governmental agencies such as the Chesapeake Bay Foundation, Ducks Unlimited, Pheasants Forever, and the Pennsylvania Chapter of the Wildlife Society, to meet this commitment, including but not limited to funds expended for the installation of conservation practices, public outreach and technical assistance, monitoring, and reporting toward this amount.

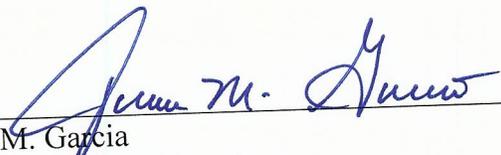
- J. Ensure that the Chesapeake Bay CREP is coordinated with other natural resource conservation programs at the State and Federal level.
- K. Provide a report to USDA summarizing the status of enrollments under the Chesapeake Bay CREP and progress in fulfilling the other commitments of this program within 90 days of the end of each federal fiscal year. The annual report to USDA must include: level of program participation, the results of the Commonwealth's environmental monitoring program, a summary of non-federal Chesapeake Bay CREP program expenditures, and recommendations to improve the program.
- L. Temporarily release participants from any contractual or easement restriction on crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture or the Commonwealth of Pennsylvania in order to address a State or national emergency.

VII. MISCELLANEOUS PROVISIONS

- A. Funding commitments by CCC, USDA, and the Commonwealth are subject to the availability of funds. In the event either party is subject to funding limitation, that party must notify the other party expeditiously and appropriate modifications may be made to this Agreement, or the Agreement may be terminated.
- B. All CRP contracts under the Chesapeake Bay CREP will be subject to all limitations set forth in the regulations at 7 CFR part 1410 including, but not limited to, such matters as economic use, transferability, violations, and contract modifications.
- C. Neither the Commonwealth, CCC, nor USDA, will assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.
- D. Easements or contracts entered into under the Chesapeake Bay CREP may not be assigned or transferred without approval of the landowners except to the extent allowed by CCC pursuant to its CRP regulations.
- E. Any amendments or revisions to this Agreement must be in writing and must be executed by the Deputy Administrator for Farm Programs, Farm Service Agency, and the Governor for the Commonwealth, or their designees or successors.
- F. The Commonwealth, CCC, and USDA, agree that each party will be responsible for its own acts and omissions and results thereof to the extent mandated by law and will not be responsible for the acts or omissions of the others and the results thereof.

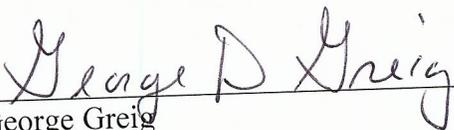
- G. This Agreement may be terminated by any party at any time upon 30 days written notice to the other parties hereto. Such termination will not alter existing contractual obligation under the Chesapeake Bay CREP between private program participants, and either the Commonwealth or CCC.
- H. The Commonwealth and the USDA agree to protect any shared data under this CREP in strict accordance with the procedures and restrictions established by or under any and all laws including the Freedom of Information Act and federal privacy laws, including Section 1619 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, section 1619), Section 2004 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, section 2004), and other applicable laws, to facilitate The Commonwealth monitoring efforts according to the provisions in the Memorandum Of Understanding between the Pennsylvania State FSA Office and the Commonwealth of Pennsylvania CREP Cooperators.

The parties signing below represent that they have the authority to sign this Revision to the Agreement on behalf of their respective parties.



Juan M. Garcia
Deputy Vice President for
Commodity Credit Corporation
And Deputy Administrator for Farm Programs
Farm Service Agency
U.S. Department of Agriculture

5/21/2012
Date



George Greig
Secretary
Pennsylvania Department of Agriculture

5/14/12
Date

Exhibit 1

CREP PRACTICE	SRR INCENTIVE	COST SHARE		INCENTIVES		
		FSA	PA	SIP	PIP	MISC
CP1 – Establishment of Cool Season Grass	(1)	50%	50% up to \$40 per acre (5)			
CP2 – Establishment of Native Grasses (Switchgrass Only)	(1)	50%	50% up to \$65 per acre (5)			
CP2 – Establishment of Native Grasses (Mixed Varieties)	(1)	50%	50% up to \$120 per acre (5)			PA Game Commission (3)
CP4D – Permanent Wildlife Habitat	(1)	50%	50% up to \$160 per acre (5)			
CP8A – Grassed Waterways	150%	50%	50% up to \$1000 per acre (5)	\$100 per acre	40% of Eligible Costs	
CP9 – Shallow Water Area for Wildlife	(1)	50%	N/A	N/A	40% of Eligible Costs	
CP12 – Wildlife Food Plot	(1)	N/A	N/A			
CP15A – Establishment of Permanent Vegetative Cover: Contour Strips	150%	50%	50% up to \$65 per acre (5)	N/A	40% of Eligible Costs	
CP22 – Riparian Buffer (Without Fencing)	150%	50%	50% up to \$850 per acre (2)	\$100 per acre	40% of Eligible Costs	
CP22 – Riparian Buffer (With Fencing)	150%	50%	50% up to \$1250 per acre (2)	\$100 per acre	40% of Eligible Costs	
CP23 – Wetland Restoration	150%	50%	50% up to \$740 per acre	\$150 per acre	40% of Eligible Costs	
CP29 – Wildlife Habitat Buffer (without fencing) (4)	150%	50%	None	\$100 per acre	40% of Eligible Costs	
CP29 – Wildlife Habitat Buffer (with fencing) (4)	150%	50%	50% up to \$400 per acre (2)	\$100 per acre	40% of Eligible Costs	
CP30 – Wetland Buffer (4)	150%	50%	None	\$100 per acre	40% of Eligible Costs	
CP33 – Habitat Buffer For Upland Birds	150%	50%	50% up to \$65 per acre (5)	\$100 per acre	40% of eligible costs	

NOTES:

(1) SRR Incentive varies with the weighted E1 for the eligible acres offered according to the following chart:

- $8 \leq E1 \leq 12$ 75% Incentive
- $12 < E1 \leq 20$ 150% Incentive
- $20 < E1 \leq 25$ 175% Incentive
- $25 < E1 \leq 30$ 200% Incentive
- $E1 > 30$ 225% Incentive

- (2) The State of Pennsylvania cost share reimbursement is only available on Riparian Buffers that are 50 feet or more in width. In the case of CP 29, no mowing will be done in the first 50' from top of bank. The cost share will not be paid until the participant completes a Stream Relief Report and submits it to the State FSA office.
- (3) Incentive only available if land enrolled in CREP is also enrolled in the Pennsylvania Game Commission Farm Game or Safety Zone Program. Maximum payment to any one CREP participant is \$2999.99.
- (4) Eligible only on Marginal Pastureland.
- (5) Pennsylvania cost share will be provided to the limits indicated for this practice if any of the following apply:
- a. The participant agrees to enroll all areas eligible along the riparian corridor on the enrolled tract in practice CP22 and/or CP29 at a minimum of 50 feet from bank.
 - b. The participant signs a maintenance agreement for post planting establishment on practice CP22; and/or
 - c. The participant has no water bodies on the offered tract but has water bodies on adjacent tract(s) and agrees to sign an agreement to maintain all existing and functioning forested buffers or enroll all eligible areas in CP 22 and/or 29 at a minimum width of 50 feet from bank on all tracts adjacent to the offered tract.
 - d. The participant has no water bodies on offered tracts or adjacent tracts.

