

For: State and County Offices

**Permanent Injunction Permitting Certain Critical Feed Use (CFU) Regarding
Category C, Cases of Special Situation**

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

On May 27, 2008, Notice CRP-598 was issued to provide that certain acreage enrolled in CRP would be available for hay and grazing after the ending of the primary nesting season. Beginning June 2, 2008, CRP participants could request to voluntarily modify CRP contracts for critical feed use (CFU), such as haying and grazing.

On July 8, 2008, a Federal court granted a Temporary Restraining Order (TRO) that:

- suspended authority to process or approve CRP-1M Addendum
- required that any critical feed use activity must immediately cease.

On July 24, 2008, the same Federal court issued a Permanent Injunction which permitted certain CFU to continue. However, producers permitted to continue critical feed use were broken down in 3 categories:

- Category A, which includes producers who had applied for CFU pursuant to Notice CRP-598, and who were approved before the July 8, 2008, Temporary Restraining Order
- Category B, which includes producers who applied for CFU before the July 8, 2008, Temporary Restraining Order, but who had not yet received approval before the TRO was issued
- Category C, which includes producers in a special situation that will be addressed in this notice.

Note: On July 25, Notice CRP-604 was issued regarding provisions applicable to Category A and Category B producers.

Disposal Date	Distribution
January 1, 2009	State Offices; State Offices relay to County Offices and NRCS State Offices

Notice CRP-606

1 Overview (Continued)

B Purpose

This notice:

- provides guidance about implementing critical feed use for Category C cases under the Permanent Injunction
- obsoletes Notice CRP-605 because of an incorrect date in subparagraph 2 B.

2 Policy

A General Permanent Injunction Policy – Category C

Except for cases permitted by Notice CRP-604, no CFU applications are authorized unless the producer can make a showing of significant reliance on Notice CRP-598, which must include **both** of the following:

- documentary proof of investment of \$4,500 or greater toward haying or grazing equipment or preparation as a result of Notice CRP-598 that was made before the TRO, that is, 5 p.m., PST, on July 8, 2008
- a declaration from the CRP contract holder attesting to the showing of significant reliance on Notice CRP-598 in making the investment defined above.

CRP participants approved under the Category C exception:

- haying must end by September 30, 2008
- grazing must end by October 15, 2008
- no rental reduction will apply
- the acres hayed or grazed will “restart the clock” for future managed haying or grazing, meaning that the activity will restart the cycle for managed haying and grazing and the next such managed haying and grazing cannot occur until the full cycle has been completed from the time of the CFU. For example, if the producer is allowed managed haying and grazing every three years, the next managed haying and grazing cannot occur until three years after the year of the CFU, and
- no person in Category C will be able to perform any CFU activity until their CFU modification is approved along with an approved modified conservation plan.

Notice CRP-606

2 Policy (Continued)

B Standards for Documentary Proof of Investment (Significant Reliance)

COC must review documentary proof of investment provided by a CRP participant claiming a showing of significant reliance on Notice CRP-598 using these guidelines:

- invoices, contracts, cancelled checks, and other forms of legal obligation that are dated between May 27, 2008, and July 8, 2008, inclusive, may be considered acceptable
- if a producer provided their own labor and materials, then follow 2-CRP, paragraph 485, to determine acceptability.

Note: COC must consult DD for guidance and approval (on an individual case-by-case basis) if COC cannot determine that submitted documentary proof of investment is acceptable according to this paragraph.

C Standards for Producer Declaration

Exhibit 1 must be used by Category C producers. To be acceptable, the Producer Declaration must provide quantities, dates, and values for each item purchased, or for labor or materials provided.

3 Approval Authorities

A Documentary Proof of Investment

COC or CED, with COC delegation may approve all documentary proof of investment cases under Category C.

Note: Other requirements of Notice CRP-598 continue to apply.

B Producer Declaration

Only Producer Declarations submitted using Exhibit 1 may be accepted. All other producer declarations shall be rejected.

4 Record Retention

A Maintaining Records

Records developed according to this notice must be maintained in the producer's CRP contract file.

County Offices shall also maintain a register (DF-26) that must be filed in CRP 2 Reports and Statistics folder, according to 25-AS, Exhibit 32. See Exhibit 2 for an example of DF-26.

All records developed according to this notice are subject to the Privacy Act and related laws.

Notice CRP-606

5 Action

A County Office Action

County Offices shall read and follow the provisions of this notice.

County Offices shall **not** permit any activity except for Category A and B producers authorized by Notice CRP-604 and Category C producers who:

- have been given notice of the new court order according to this notice
- have been approved for participation in the CFU with an approved modified conservation plan, and
- meet all the conditions of the CFU as modified in this notice.

Using appropriate public information methods including print and broadcast media and newsletters, County Offices shall provide CRP participants notice of the provisions of this notice for Category C cases. These provisions must include:

- haying must end by September 30, 2008
- grazing must end by October 15, 2008
- no rental reduction will apply
- the acres hayed or grazed will “restart the clock” for future managed haying or grazing, meaning that the activity will restart the cycle for managed haying and grazing and the next such managed haying and grazing cannot occur until the full cycle has been completed from the time of the CFU. For example, if the producer is allowed managed haying and grazing every three years, the next managed haying and grazing cannot occur until three years after the year of the CFU, and
- no person in Category C will be able to perform any CFU activity until both their CFU modification is approved, and a modified conservation plan is approved.

Note: For areas with a primary nesting season that has already ended, or the ending of which is imminent, County Offices shall provide immediate notification to CRP participants. For all other areas, County Offices must schedule this notification in a manner so as to not delay or minimize any haying and grazing authorized by Notice CRP-598.

Notice CRP-606

5 Action (Continued)

A County Office Action (Continued)

Category C producers may **not** begin CFU until all of the following have been obtained and approved:

- contract modification
- a modification of the conservation plan
- documentary proof and the accompanying declaration as provided in Exhibit 1

County Offices must also:

- file the documentary proof and accompanying Exhibit 1 declaration in the producer's CRP contract file
- maintain a register (DF-26) according to Exhibit 2.

B State Office Action

State Offices shall ensure that County Offices follow all of the instructions in this notice.

Conservation Reserve Program – Critical Feed Use – Declaration

I, _____, declare and say –

- 1. This declaration is made in regard my request to engage in critical feed use pursuant to the terms of the Permanent Injunction ordered by the U.S. District Court, Western District of Washington at Seattle, in the matter of the National Wildlife Federation et al., v. Ed Schafer, et al., No. 2:08-cv-01004-JCC.
- 2. I understand that the U.S. Department of Agriculture (USDA) authorized Critical Feed Use (CFU) on May 27, 2008, to allow rental-reduction-free haying or grazing on some land enrolled in the Conservation Reserve Program (CRP). It was my belief that some or all of the land that I had enrolled in the CRP was eligible to participate in CFU as originally announced. Although I had not applied for CFU as of July 8, 2008, at 5 p.m. PST, I took certain actions in significant reliance upon USDA’s May 27, 2008, CFU announcement.
- 3. The relevant date(s), value(s), and item(s) purchased, received, or obligated between May 27, 2008, and July 8, 2008, inclusive, for purposes of my participation in CFU included:

- 4. The relevant date(s), value(s), and item(s) for labor and materials that I provided between May 27, 2008, and July 8, 2008, inclusive, for purposes of my participation in CFU included:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed by me, this the _____ day of _____, 2008, in _____.

Signature: _____

Date: _____

Printed Name: _____

CRP Contract No.: _____

