

## Grassland Reserve Program: Notice of Availability of Funds

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[Notices]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

### Grassland Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability of program funds for the Grassland Reserve Program.

**SUMMARY:** The Commodity Credit Corporation (CCC) announces the availability of \$49,492,000 to implement the Grassland Reserve Program (GRP) in fiscal year 2003. Section 2401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) amended the Food Security Act of 1985 to authorize this program. The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC, to the Administrator, Farm Service Agency

(FSA) and the Chief, Natural Resources Conservation Service (NRCS). These agency leaders are officers of the CCC.

Although this notice applies only to funds made available in FY2003, CCC will, at a later date, issue a regulation for FY 2004 through FY 2007 program implementation. The rule will address and seek comment on a number of issues including: the process for establishing program priorities and criteria; the administration of easements and long-term contracts; the process of allocating and focusing funding at State and local levels; and the process for private organizations and State agencies to apply to hold and enforce GRP easements.

**DATES:** Funds will be available from June 30, 2003 through September 30, 2003.

**ADDRESSES:** Address all comments to Charles Whitmore, Acting Director, **Conservation Operations Division, Natural Resources Conservation Service**, P.O. Box 2890, Washington, DC 20013, (202) 720-1845, fax 202-720-4265; Submit electronic comments to [FarmBillRules@usda.gov](mailto:FarmBillRules@usda.gov); Attn: Grassland Reserve Program.

**FOR FURTHER INFORMATION CONTACT:** Leslie Deavers, Watersheds and Wetlands Division, **Natural Resources Conservation Service**, P.O. 2890, Washington, DC 20013, (202) 720-1067, fax (202) 720-2143, e-mail: [leslie.deavers@usda.gov](mailto:leslie.deavers@usda.gov).

**SUPPLEMENTARY INFORMATION:** Grasslands constitute the largest land cover on America's private lands. Privately-owned grasslands and shrublands cover more than 525 million acres in the United States. These lands contribute significantly to the economies of many regions, provide biodiversity of plant and animal populations, and play a key role in environmental quality. Specifically, grasslands and shrublands impact water quantity and quality and, when properly managed, can result in cleaner water supplies, healthy riparian areas, reduce potential for flooding, and control sediment loadings in streams and other water bodies. These lands are vital for the production of forage for domestic livestock, and provide forage and habitat for maintaining healthy wildlife populations. These lands also improve the aesthetic character of the landscape, provide scenic vistas and open space, provide recreational opportunities, and protect the soil from water and wind erosion.

Large expanses of grassland acreage are annually threatened by conversion to other land uses such as cropland and urban development. Approximately 23 million acres of grassland and

shrubland were converted to cropland between 1982 and 1997, and about six million acres were converted to urban and other uses (1997 NRI).

## **Background**

Section 2401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) amended the Food Security Act of 1985 to authorize GRP (16 U.S.C. 3838n-3838q). The purpose of the program is to assist landowners with restoring and conserving grassland, rangeland, pastureland, and certain other lands. The statute provides that no more than two million acres of restored or improved grassland, rangeland, and pastureland can be enrolled in the program through FY 2007. The program offers landowners the option to grant an easement to the Secretary or enter into a long-term agreement to preserve and protect the ecological benefits of eligible land.

The GRP statute requires the Secretary to consider grazing operations, biodiversity, and grassland under the greatest threat of conversion when evaluating and ranking applications. In FY 2003, CCC plans to use GRP to protect grazing lands from conversion and support efforts to maintain or enhance biodiversity.

Although CCC is implementing the program nationwide in FY2003, it recognizes that with limited funding and large pool of eligible acreage, nationwide implementation may result in a large number of applications remaining unfunded. Therefore, the application selection criteria are critical to ensure only the highest priority areas are protected.

## **Definitions**

For the purposes of this notice, the following definitions apply.

**Conservation** plan means a record of the decisions, and supporting information, for the **conservation** treatment of a unit of land or water. The **conservation** plan includes the schedule of operations, activities, and estimated expenditures, if needed to solve identified **natural** resource concerns.

**Eligible applicant** means the landowner(s) for easement applications because only a landowner can transfer land rights. Easement applications will only be considered when the applicant can provide evidence of ownership. For annual rental agreements, eligible applicant means both landowners and operators who have evidence of control of the land for the agreement period.

**Eligible practices** means any practice identified in the NRCS Field Office Technical Guide (FOTG) that enhances or restores native grasses, forbs, or shrubs as determined by the NRCS State Conservationist.

**Fair market value** for easement acquisition means the amount determined through a real property appraisal that will be used to calculate the offer to the participant. Fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and

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reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. For the purposes of GRP, the fair market value will be determined by an appraisal, or other method determined reasonable by CCC, less the grazing value. Grazing values will be determined by CCC based on appraised grazing values.

**Forb** means any herbaceous plant other than those in the grass family.

**Grassland** means land on which the vegetation is dominated by grasses, grass-like plants and/or forbs.

**Grazing values** for rental agreements will be determined by CCC based on local prevailing grazing values.

**Rangeland** means land on which the native vegetation (climax or **natural** potential) is predominantly grasses, grass-like plants, forbs, or shrubs suitable for grazing or browsing use. Rangelands include **natural** grassland, savannas, most deserts, tundra, alpine plant communities, coastal marshes, wet meadows and introduced plant communities managed like rangeland.

**Restored grassland** means acreage restored from cropland, non-native grasses, or some other vegetative cover to native grass, forbs or shrubs. When native seed is not available, plants that provide similar functions and values for the intended use are permitted.

**Shrubland** means a type of rangeland dominated by small woody perennial plants

## **Program Requirements**

Effective upon the publication date of this notice, CCC announces the availability of \$49,942,000 for GRP, from June 30, 2003 until September 30, 2003. Applications for participation will be accepted on a continual basis throughout this period at local USDA Service Centers from landowners of private land. NRCS State Conservationists will establish funding cut-off periods throughout FY 2003 to batch and select applications. These cut-off periods will be available in program outreach material provided by CCC. Once funding levels have been exhausted, eligible applicants will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

GRP contracts and easements prohibit: (1) The production of crops (other than hay), fruit trees, vineyards, or any other agricultural commodity that requires breaking the soil surface; and (2) any other activity that would disturb the surface of the land except for appropriate land management activities identified in the easement or agreement. For applicants who are interested in restoring grasslands, forbs, and shrublands, the program offers an opportunity to enroll in restoration agreements.

The GRP statute provides that eligible land includes grasslands; land that contains forbs; shrubland, including improved rangeland and pastureland; or, land that is located in an area that has been historically dominated by grassland, forbs or shrubland when these lands have the potential to enhance plant and animal biodiversity. Other eligible land includes land that is incidental to the eligible land when it is considered necessary by CCC for the efficient administration of an agreement or easement.

Applicants may submit applications for easements, rental agreements, and restoration agreements. Offers for participation must include no less than 40 contiguous acres, unless CCC determines a small parcel is appropriate to achieve the purposes of the program. When selecting offers of eligible lands, CCC shall emphasize support for grazing operations; plant and animal biodiversity; and other eligible land under the greatest threat of conversion. The conversion threat may include conversion to agriculture or non-agriculture uses.

Pursuant to section 1604 of the Farm Security and Rural Investment Act of 2002, benefits under this part shall not be available to a person whose adjusted gross income exceeds \$2.5 million, as determined under the standards set forth in 7 CFR part 1400.

## **Enrollment Options**

The GRP offers applicants multiple enrollment options. Landowners may submit applications for permanent easements or 30-year easements. Landowners and others who have general control of the acreage being offered may submit applications for 10-year, 15-year, 20-year, or 30-year rental agreements. Each enrollment option permits: (1) Common grazing practices, including maintenance and necessary cultural practices, that are consistent with maintaining the viability of grassland, forb and shrub species common to the local area; (2) haying, mowing, or harvesting for seed production, subject to certain restrictions, such as restrictions during the nesting season of bird species that are in significant decline or those that are required to be protected under Federal or State law, as determined by NRCS or its designee; and (3) fire rehabilitation and the construction of fire breaks and fences. Participants will be required to follow a **conservation** plan, developed by NRCS or its designee, and the participant, to preserve the integrity of the grassland enrolled in the program.

For easement offers, land is considered enrolled after CCC makes a tentative offer of acceptance, and the landowner signs an intent to continue in the program. For rental agreement offers, the land is considered enrolled after a GRP contract is approved by CCC.

## **Additional Requirements for Easements**

CCC shall use a standard easement deed that is available on-line at <http://www.sc.egov.usda.gov>.

In addition to the requirements identified in the "Program Requirements" section, landowners who participate in an easement enrollment option agree to:

- (1) Provide written statement of consent to the easement signed by persons holding a security interest or any vested interest in the land;
- (2) Provide proof of clear title;
- (3) Comply with other terms of the easement; and
- (4) Provide access to NRCS or its representative for easement administration and monitoring activities on the property.

## **Funding Allocations**

The GRP statute requires that of the total amount of funds expended under the program to acquire easements and rental agreements, 60 percent of the program funds are to be used for easements and 30-year agreements and 40 percent of the funds are to be used for 10-year, 15-year, and 20-year rental agreements.

CCC may divide the \$49,942,000 into two equal pools. Fifty percent of the funds will be distributed to the USDA State office in proportion to the number of grazing operations, the acres of pasture and rangeland under the threat of conversion, and biodiversity considerations. The remaining funds may be held in a national reserve. This reserve will be distributed after program demand, expressed in terms of the number of applicants, acres, and estimated cost to enroll the land, and, ecological considerations, such as biodiversity and threat of grassland conversion, are known. If the State office is unable to use its allocation, CCC may redistribute funds to other States that can obligate the funds to eligible projects prior to September 30, 2003.

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### **Application Process**

CCC will consider for funding under this notice applications received throughout FY 2003. USDA will widely distribute information on the availability of assistance through GRP, State, and National goals, and information needed to submit applications. Applicants must submit an application, Form AD-1153, Application for Long-Term Contracted Assistance, to CCC to be considered for participation. Program applications can be obtained from any local USDA Service Center or on the USDA website at <http://www.sc.egov.usda.gov>. Applications should be submitted to the office that administers the records for the area in which the land being offered for participation is located. Applications may be submitted by mail, fax, or electronically to a USDA Service Center. USDA will evaluate the application for eligibility and complete an application ranking process. Selection of individual applications will be made at the State level as described below.

### **Application Selection**

CCC is required by statute to emphasize support for grazing operations; plant and animal biodiversity; and grassland, land that contains forbs, and shrubland under the greatest threat of conversion. Selection criteria which incorporates these areas of emphasis, will be developed at the State level by the NRCS State Conservationist and the FSA State Executive Director, with



advice from the State Technical Committee. Individual application selection will be made at the State level by the NRCS State Conservationist and the FSA State Executive Director. Selection criteria for each State will be made available to the public prior to signup upon request. Each State's application selection criteria will be available on the NRCS Web site at <http://www.nrcs.usda.gov/farmbill> and <http://www.fsa.usda.gov/dafp/grp>. Selection criteria will, at a minimum, consider the following national criteria: the threat of conversion from grass to cropland; the threat of conversion from grass to non-agriculture use; location significance; whether the land is part of an existing grazing operation; and whether the site serves as habitat that promotes and enhances plant and animal biodiversity, as determined by the NRCS State Conservationist, with advice from the State Technical Committee.

State offices have the flexibility to determine state-specific criteria that emphasizes grasslands of state significance or locations of critical need based on the threat of conversion or biodiversity of plant or wildlife populations.

## **Payments**

For permanent easement acquisition, CCC will provide payment equal to the fair market value of the land, less the grazing value of the land encumbered by the easement. Market values will be determined using an appraisal process. In addition, CCC will provide all the administrative costs associated with recording the easement, including appraisal fees, survey costs, title insurance, and recording fees. For 30-year easements, CCC will provide payment equal to 30 percent of the fair market value of the land, less the grazing value of the land for the period during which the land is encumbered by the easement. Easement payments may be provided, at the participant's request, in lump sum or annual payments (equal or unequal amounts) for no more than 10 years.

For long-term rental agreements, annual rental payments will be an amount not more than 75 percent of the grazing value of the land covered by the agreement for the life of the agreement, as determined by CCC. Payments will be disbursed on the agreement anniversary date of each Federal fiscal year.

For restoration agreements, CCC will provide up to 90 percent of the restoration costs on lands that have never been cultivated, and up to 75 percent of the cost on restored grasslands. Restoration agreements can be entered into in conjunction with either easement projects or rental agreements. Participants will be paid upon certification of the completion of the approved practice(s) by NRCS or an approved third party. Participants may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include:

personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. The participant's share of the project may be provided by a public or private third party.

Participants may assign the right to receive any payments described in this notice, in whole or in part, as provided in 7 CFR part 1404.

Subject to 7 CFR part 1403, any payment under this notice or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

### **Delegation of Easement Administration to Private Organizations**

The GRP statutory authority provides that the Secretary may permit a private conservation or land trust organization or a State agency to hold and enforce an easement provided that: (1) Granting permission will promote protection of eligible land; (2) the owner authorizes the private organization or State agency to hold and enforce the easement; and (3) the private organization or State agency agrees to assume the costs incurred in administering and enforcing the easement, including costs of restoration or rehabilitation of the land, as specified by the owner and the private organization. In addition, permission is contingent upon the Secretary having the right to conduct periodic inspections, and provide enforcement action, if the private organization is unable to effectively implement enforcement action. The provisions for implementing this authority will be addressed in a proposed rule to be published later this year. The GRP authority is different than the authority provided for the Farm and Ranchland Protection Program (FRPP). Under FRPP the Secretary has the authority to acquire an interest in property that is subject to a pending offer by another entity. In GRP, the Secretary is the holder of the easement and may delegate the easement administration responsibilities to a private organization.

### **Violations**

When the terms or conditions of an easement, rental agreement, or restoration agreement are violated, the easement or rental agreement will remain in force. For rental agreements or restoration agreements, CCC may require the participant to refund all or part of any payments received, with interest. For easement violations, USDA reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations, even under situations where a third party assumed administrative responsibility for the easement. Such entry may be

made at the discretion of USDA when such actions are deemed necessary to protect important grassland areas.

## **Civil Rights**

CCC and USDA have collected civil rights data on farmers and ranchers who participate in conservation programs. Based on past participation, it is estimated that the funding being made

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available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits.

## **Environmental Evaluation**

On each farm or ranch, during the application evaluation process, the environmental effects of any proposed actions are evaluated on a case-by-case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an EA nor an EIS has been prepared for this notice.

## **Executive Order 12866**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), USDA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this Notice of Fund Availability is not a “significant regulatory action”.

Signed in Washington, DC, on June 1, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

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