

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE FINAL INTERIM RULE:
WETLAND RESERVE PROGRAM**

Agency: US Department of Agriculture
Natural Resources Conservation Service (NRCS)

Subject: Civil Rights Impact Analysis
Wetland Reserve Program Interim Final Rule
2008 Farm Bill

A review of the Wetlands Reserve Program (WRP) interim final rule has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the final WRP rule would have a disproportionate adverse civil rights impact for NRCS producers who are minorities, women or persons with disabilities.

BACKGROUND

The WRP is a voluntary program, which provides technical and financial assistance, to eligible landowners to address wetland, wildlife habitat, soil, water, and related natural resource concerns on private lands in an environmentally beneficial and cost-effective manner. The program provides an opportunity for landowners to receive financial incentives to restore, protect, and enhance wetlands in exchange for retiring marginal land from agriculture.

The WRP was mandated by Section 1237 of the Food Security Act of 1985 (Pub.L. 99-98), as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (Pub.L. 101-624), the Federal Agriculture Improvement and Reform Act of 1996 (Pub.L. 104-127), the Food Security and Rural Investment Act of 2002 (Pub.L. 107-171) and the Food, Energy, and Conservation Act of 2008 (Pub.L. 110-246) to assist owners in restoring and protecting wetlands. The Natural Resources Conservation Service (NRCS) administers the program. Funding for WRP comes from the Commodity Credit Corporation.

LEGISLATIVE CHANGES

1) Change the process for determining the easement value, NRCS will pay the lowest of the following three: a) Fair market value of the land according to the Uniform Standards of Professional Appraisal Practices (USPAP) or an area-wide market analysis; b) Geographic area rate cap as determined by NRCS; or c) Landowner's offer.

2) Add the limitation that for payments for easements valued at \$500,000 or more will be made in at least five annual payments, unless there is an approved justification for a single payment.

3) Add the limitation that for restoration cost-share agreement enrollments, annual payments may not exceed \$50,000 per year.

4) Change the ownership requirement from 12 months to 7 years for easement enrollment. A waiver of the ownership requirement can be granted if adequate assurances are provided that the land was not purchased for WRP enrollment.

5) Limit eligible acres to private and tribal lands.

6) Add an option of 30-year contracts for acreage owned by Indian Tribes.

CIVIL RIGHT IMPACT ANALYSIS

The Civil Rights Impact Analysis (CRIA) is directed towards the identification and examination of actual or potential Civil Rights implications that may adversely impact the participation of protected group members. The purpose is to identify all the various adverse implications the proposed WRP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review and analysis examined: (A) the rule and general provision; (B) administration and development; (C) historical participation data; (D) eligibility criteria; (E) outreach strategy; (F) conclusion; and (G) NRCS Civil Rights Director's certification. The examination sought to determine:

- what segment of the population will be affected by the rule;
- if all the affected groups will be provided the same opportunities to comment on the rule during the public notification period and participate in the decision-making or rulemaking process for WRP;
- if all protected group members historically were provided the same opportunities to participate in similar NRCS programs; and
- if all protected group members were provided the same information in order to determine whether or not they wished to participate in WRP, or any similar NRCS programs.

A. General Provisions

Congress continues to recognize the importance of private wetlands by reauthorizing the Wetlands Reserve Program in the Food, Conservation, and Energy Act of 2008. The rule sets forth the policy for the Natural Resources Conservation Service (NRCS), agent of the

Credit Commodity Corporation (CCC), to provide program and technical assistance to eligible participants in implementing this program.

Benefits

WRP participants benefit by: Receiving financial and technical assistance in return for restoring, protecting and enhancing wetland functions and values; seeing a reduction in problems associated with farming potentially difficult areas; and having incentives to develop wildlife recreational opportunities on their land. Wetlands benefit the nation by providing habitat for fish and wildlife, including threatened and endangered species; improving water quality by filtering sediments and chemicals; reducing flooding; recharging groundwater; protecting biological diversity; as well as providing opportunities for educational, scientific, and recreational activities.

B. Administration and Development

The Wetlands Reserve Program (WRP) is a voluntary program that provides technical and financial assistance to private landowners and Tribes to restore, protect, and enhance wetlands in exchange for retiring eligible land from agriculture. Over 1.9 million acres are currently enrolled in WRP.

NRCS State Conservationists, with advice from the State Technical Committees, established a process to determine easement values. The easement value shall be the lowest of a) Fair market value of the land according to the Uniform Standards of Professional Appraisal Practices (USPAP) or an area-wide market analysis; b) Geographic area rate cap as determined by NRCS; or c) Landowner's offer.

Appraisals may be acquired by federal contract, interagency agreement, cooperative agreement, or other appropriate methods. The NRCS conducts administrative and technical reviews to ensure that land value results are reasonable from a business decision making sure perspective and appraisals are completed properly.

Private landowners may file an application for a conservation easement or a cost-share restoration agreement with USDA to restore and protect wetlands at any time. Tribes may apply for enrollment through a 30-year contract or a restoration cost-share agreement. Participants voluntarily limit future use of the land, but retain private ownership. Easements are held by the United States of America, by and through the CCC. Applications may be obtained and filed at any time with your local USDA Service Center or conservation district office. Applications also may be obtained through USDA's e-gov Internet site at: <http://forms.sc.egov.usda.gov/eforms/formsearchservlet> - enter "Natural Resources Conservation Service" in the Agency field, "Wetlands Reserve Program" in the Program Name field, and "AD-1153" in the Form Number field. Persons who file applications for easement options are provided a copy of the easement deed and other forms necessary for the transfer of land rights. NRCS handles administrative and technical responsibilities.

Selecting Applications

After applications are filed, NRCS makes a land and landowner eligibility determination. A site visit is made to collect data associated with the ranking process, prepare a preliminary restoration plan, complete National Environmental Policy Act requirements, and evaluate the site and surrounding area for the presence of hazardous substances. State Conservationists, with input from State Technical Committees, develop ranking criteria based on broad national guidelines. Offers are ranked based on cost and ecological considerations. Separate ranking lists are kept for each enrollment type. Funding decisions are made at the state level and are generally based on total point score. State Conservationists, in consultation with the State Technical Committee, have the authority to enroll projects outside of the ranking process if the area has been designated by the State Conservationist as a "special project" area. Special project priority may be provided to a particular geographic area or to a specific project even though the individual offer might not otherwise rank high enough to be accepted. This policy provides NRCS the opportunity to begin a WRP initiative in an area that has been determined important for wetland restoration activities, regardless of individual site ranking.

The national office is not involved in the selection of individual projects, unless the selection is part of a special initiative where all selections are made at the national office. Wetlands provide habitat for fish and wildlife, including threatened and endangered species; improve water quality by filtering sediments and chemicals; reduce flooding; recharge groundwater; protect biological diversity; and provide opportunities for educational, scientific, and limited recreational activities.

The program offers the following enrollment options:

A. On private land -

1. ***Permanent Easement*** is a conservation easement in perpetuity. USDA pays 100 percent of the easement value and up to 100 percent of the restoration costs.
2. ***30-Year Easement*** is an easement that expires after 30 years. USDA pays up to 75 percent of the easement value and up to 75 percent of the restoration costs. For both permanent and 30-year easements, USDA pays all costs associated with recording the easement in the local land records office, including recording fees, charges for abstracts, survey and appraisal fees, and title insurance.
3. ***Restoration Cost-Share Agreement*** is an agreement to restore or enhance the wetland functions and values without placing an easement on the enrolled acres. USDA pays up to 75 percent of the restoration costs.

B. On acreage owned by Indian Tribes -

1. ***30-year contract*** is a contract with the Tribe that includes the same restrictions as would be placed on a 30-year easement but without placing

an actual easement encumbrance on the land. The participant will be compensated for the contract at the same rate as would be provided for a 30-year easement on the same parcel. NRCS would also pay up to 75% of the actual cost of any necessary restoration practices.

2. Restoration Cost-Share Agreement is an agreement to restore or enhance the wetland functions and values without placing an easement on the enrolled acres. USDA pays up to 75 percent of the restoration costs.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data, a barrier analysis on participation was not conducted. Historical data has been maintained, however it has been deemed unreliable due to the fact it does not include information on the number of program participants with disabilities, nor does it differentiate between whether small business entities are male or female owned.

D. Eligibility Criteria

To offer a conservation easement, the landowner must have owned the land for at least 7 years prior to enrolling it in the program, unless the land was inherited, the landowner exercised the landowner's right of redemption after foreclosure, or the landowner can provide NRCS with adequate assurances that the land was not obtained for the purpose of enrolling it in the program. To participate in a restoration cost-share agreement, the landowner must show evidence of ownership.

To be eligible for WRP, land must be restorable and be suitable for wildlife benefits. This includes: wetlands farmed under natural conditions; farmed wetlands; prior converted cropland; farmed wetland pasture; land that has become a wetland as a result of flooding; and rangeland, pasture, or production forest land where the hydrology has been significantly degraded and can be restored. Other lands that are functionally dependant on eligible lands may be included along with the eligible lands mentioned above and include: riparian areas which link protected wetlands; lands adjacent to protected wetlands that contribute significantly to wetland functions and values; and previously restored wetlands that need long-term protection.

Ineligible Land. Ineligible land includes wetlands converted after December 23, 1985; Lands with timber stands established under a Conservation Reserve Program contract; Federal lands; and lands where conditions make restoration impossible. The Adjusted Gross Income provision of the 2002 Farm Bill impacts eligibility for WRP and several other 2002 Farm Bill programs. Individuals or entities that have an average adjusted gross non-farm income exceeding \$1 million for the three tax years immediately preceding the year the contract is approved are not eligible to receive program benefits or payments. However, an exemption is provided in cases where 66.66 percent of the adjusted gross income is derived from farming, ranching, or forestry operations.

E. Outreach Strategy

The Easement Programs Division (EPD) will work in partnership with the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed WRP rule will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained and information regarding the rule will be sent to land-grant Universities, 1890 Universities, HACU's, colleges and universities located in U.S. Territories, and Tribal Colleges and Universities.

EPD will work with the Outreach Division to submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgriAbility Project (20,000-30,000 farmers with disabilities receive their Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint underserved producers with the provisions of WRP. Spanish-translated press releases and informational materials will be made available.

The locally led process at the service centers level is key and provides for input from a broad range of agencies, organizations, businesses, and individuals in the local areas who have an interest in natural resource management. Through this input process there is the opportunity for minority and socially disadvantaged groups to be informed regarding WRP. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

States will make every effort to reach all eligible producers through various means including newspapers, magazines, local publications, radio, personal contacts, meetings, newsletters, churches, organizations, community advocacy groups, etc.

Special efforts will be made to distribute the information regarding the WRP through personal mailings to potential participants in NRCS conservation programs who are minorities, women, or persons with disabilities.

F. Conclusion

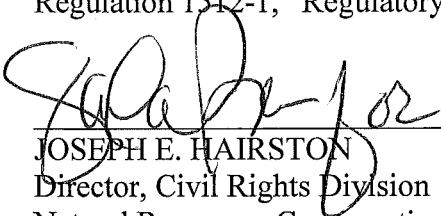
Therefore, our review of the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. When the rule is published, all populations will be provided the opportunity to comment on the rule. The data presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs.

Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs.

The provisions of WRP apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status.

G. Certification

I certify that the following review and analysis has been conducted in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and Departmental Regulation 1512-1, "Regulatory Decision-Making Requirements."



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9/16/08

Date