



Worldwide Office  
4245 North Fairfax Dr.  
Suite 100  
Arlington, Virginia 22203

tel (703) 841-5300  
fax (703) 841-7400  
nature.org

179

**COMMENTS ON GRASSLAND RESERVE PROGRAM**  
**Interim Final Rule published January 21, 2009**

Fax: (202) 720-9689

The Nature Conservancy (Conservancy) appreciates the opportunity to comment on the 2008 Farm Bill Interim Final Rules for the Grasslands Reserve Program.

From an overall program standpoint, the Conservancy urges NRCS to manage the GRP so that a baseline is maintained for future farm bills as well as NRCS staffing. The demand for GRP is such that the entire program could be allocated within one year.

Specific comments on the interim final regulation are:

**Section 1415.3 Definitions: Purchase Price** – The Conservancy urges NRCS to follow the statute as it defines what the Secretary shall pay. The statute under section 1238P(b)(3)(B) establishes the method for determination of the purchase price for an easement. According to that section, the Secretary shall pay compensation under the GRP using the lowest of the fair market value (less the grazing value) using either USPAP or an area-wide market analysis or survey; or the amount corresponding to a geographical cap; or the offer made by the landowner. The interim final regulation promulgates this formula correctly under section 1415.10.

The statute does not grant NRCS authority to subtract a landowner donation to determine purchase price as promulgated under the interim final regulation via the definition of purchase price. In fact, the statute quite clearly states under section 1238Q(d)2(H) that a charitable donation or qualified conservation contribution from a landowner can be used as part of an eligible entity's share of the purchase price of an easement under the program – not the Secretary.

Moreover under section 1238(Q)(d)3(B) the statute requires that a minimum share of the purchase price by an eligible entity shall be equal to the Secretaries. If the interim final regulation is left as drafted, then the subtraction of a donation by the Secretary to determine the Secretary's purchase price will make 1238(Q)(d)2(H) moot as the eligible entity would not be able to count the donation towards its share of the purchase price.

**Section 1415.3 Definitions: Rangeland** – The Conservancy suggests that introduced forage species should be removed, as that definition is more appropriate under pastureland.

**Section 1415.4(c) – Program Requirements, grazing management plan** – To the extent an eligible entity is holding and managing the easement, the eligible entity must

be privy to the grazing plan in addition to the landowner and the Secretary. The eligible entity should also be privy and a party to any modifications of a grazing plan if it is holding the easement. The Conservancy believes this is the intent of the statute under section 1238Q(b)6 as it refers to "mutual agreement of the parties."

**Section 1415.5 – Land eligibility** -- The Conservancy believes that the inclusion of "for which grazing is the predominant" use allows NRCS to target large tracts of grassland in the West where grazing is the predominant use. In addition, The Conservancy supports land found in section 1415.5(e) and believes it should make it possible to place an easement on a high-value conservation property with part or all of its mineral rights severed or in a split estate.

**Section 1415.8(j) – 60/40 split** – The Conservancy urges NRCS to drop the "no more than" language in this section. The statute does not use "no more than" and simply gives the 60/40 split as a guide. Section 1238N(b)3 states the Secretary "shall use to the extent practicable (A) 40 percent for rental contracts; and (b) 60 percent for easements." It does not, as section 1415.8j state "no more than 60 percent of funds are used for the purchase of easements....., and no more than 40 percent of funds are used for rental contracts." Moreover, this 60/40 split is not an annual goal as established in the statute but rather an overall goal of the total amount of funds expended under GRP.

**Section 1415.174 (b)(5) – Dedicated fund** – Section 1238Q(d) does not specify that a "dedicated" fund is required by an eligible entity for the purposes of easement management, monitoring, and enforcement. It is appropriate and desirable for entities to have an adequate stewardship endowment fund to assure they can meet the perpetual management of conservation assignments they hold and administer. In some instances, however, these restricted funds are designated solely for enforcement purposes. The conservation monitoring and management functions may be addressed separately in the organization's operational budget which may not be "dedicated". The Conservancy suggests a change to clarify the funds be a necessary requirement for eligible entities, but the fund need not be "dedicated".