



Natural Resources Conservation Service
One Credit Union Place, Suite 340
Harrisburg, PA 1700-2993

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Conservation Programs Manual

PA 440 CPM 525.22 CRP Supplement

Subject: Pennsylvania NRCS State Supplement to CPM 440, Part 525, Section 525.22
Conservation Technical Assistance to Federal Agencies “CRP, Continuous CRP and CREP”

Purpose: To transmit Pennsylvania NRCS State Supplement to CPM 440, Part 525, Section 525.22 Conservation Technical Assistance to Federal Agencies, to be known as “Pennsylvania NRCS CRP Supplement”

Effective Date: Upon Receipt

Background: The Pennsylvania NRCS CRP Supplement provides additional guidance to the CPM provision that addresses technical assistance to other Federal agencies. Pennsylvania NRCS provides technical assistance to the Farm Services Agency (FSA) under the Conservation Reserve Program (CRP), including General Sign-Ups, Continuous CRP, and Conservation Reserve Enhancement Program (CREP). FSA policy governing these programs can be found in 2-CRP, and the Pennsylvania NRCS CRP Supplement is subject to FSA policy and any changes made thereto.

NRCS at the National level has not issued a program-specific manual for CRP, Continuous CRP, or CREP. The guidance contained in the Pennsylvania NRCS CRP Supplement addresses particular issues of technical assistance delivery under CRP that have previously been contained in Pennsylvania bulletins but are more appropriately addressed, because of their enduring nature, through a State supplement to the Conservation Programs Manual.

Directions: The Pennsylvania CRP Supplement is available on the Pennsylvania NRCS intranet at http://www.pa.nrcs.usda.gov/intranet/general_manual/index.html. If hard copy of the National Conservation Programs Manual is still being maintained, please insert Pennsylvania CRP Supplement behind 440 CPM Part 525.22.

/s/ Barry Frantz, Acting

CRAIG R. DERICKSON
State Conservationist

Distribution: AO



**Pennsylvania NRCS State Supplement to CPM 440, Part 525, Section 525.22
Conservation Technical Assistance to Federal Agencies
“CRP, Continuous CRP and CREP”**

Contents

Eligibility Determinations Page 3

Conservation Planning Page 6

Implementation Assistance Page 10

Status Reviews and Follow-Up Page 11

Progress Reporting Page 12

EXHIBITS:

- Exhibit 1: Sample Environmental Effects Worksheet for Riparian Buffers**
- Exhibit 2: Sample Environmental Effects Worksheet for Grasslands**
- Exhibit 3: Recommended Standard Narratives**
- Exhibit 4: Sample Blank Ledger for Tracking CRP/CREP Work Load**

**Pennsylvania NRCS State Supplement to CPM 440, Part 525, Section 525.22
Conservation Technical Assistance to Federal Agencies
“CRP, Continuous CRP and CREP”**

Section 525.22 Conservation Technical Assistance to Federal Agencies

(a) Conservation Reserve Program Technical Assistance.

This manual is the State supplement to the Conservation Programs Manual (CPM) provision that addresses technical assistance to other Federal agencies. NRCS provides technical assistance to the Farm Services Agency (FSA) under the Conservation Reserve Program (CRP), including General Sign-Ups, Continuous CRP, or Conservation Reserve Enhancement Program (CREP). NRCS technical assistance activities include eligibility determinations, conservation planning, design and implementation assistance, status reviews, planning follow-up, and other technical assistance activities agreed to between NRCS and FSA.

This State supplement is not a stand-alone document. Its purpose is to improve the quality and consistency of the technical assistance NRCS provides to FSA under CRP, and thus particular provisions are subject to changes in FSA policy. The guidance contained in this State supplement addresses particular issues of technical assistance delivery under CRP that have previously been contained in bulletins but are more appropriately addressed, because of their enduring nature, through a State supplement to the Conservation Program Manual.

(1) Eligibility Determinations

All Conservation Practices (CP) eligible for funding in CRP, Continuous CRP and CREP require that the practice will improve environmental benefits from pre-contract conditions and prevent degradation of environmental benefits from recurring. Therefore, landowners who have already adopted the practice or the management expected by the practice are not eligible. Additionally, at the time that the eligibility determination is made, the site must currently exhibit the resource concerns for which the practice or management would address.

Exhibit 9 to the FSA 2-CRP manual sets forth the eligibility criteria for all CRP practices. The discussion below is supplemental to the information found in Exhibit 9, reiterating certain criteria and identifying additional technical criteria used in eligibility determinations in Pennsylvania.

When NRCS makes an eligibility determination under CRP, such eligibility determination is considered a Title XII technical determination for appeal purposes. Any technical determination made by NRCS that is adverse to the participant will be issued initially as a preliminary technical determination. If it is determined that the initial technical determination is not adverse to the participant, i.e. the practice requested is determined to be eligible for enrollment, then the initial technical determination may be issued as a final decision and may be relied upon by FSA immediately.

However, if the initial technical determination is adverse to the participant, i.e. the practice is determined not to be eligible for enrollment, then NRCS must follow the appeals process for preliminary technical determinations as found in 440-CPM-510 and 7 CFR Part 614.

Document the findings with regard to the determination of eligibility and develop the “Preliminary Technical Determination” on which any further program decisions will be based. The National Office has a template form for the technical determination and a form letter. The link to these forms can be found at <http://www.nrcs.usda.gov/programs/appeals>.

As the template form has incorporated, the preliminary technical determination must include the following items in order to meet the notification requirements:

- a. Factual basis for the preliminary technical determination
- b. Regulatory or statutory basis for the preliminary technical determination
- c. Issues raised and addressed by the preliminary technical determination
- d. The facts found during the investigation
- e. A complete analysis of the facts
- f. What the facts, as analyzed represent when compared to the rules governing the program
- g. Appeal rights – field review at the local level; request for reconsideration by the STC
- h. Rights to mediation
- i. Rights to request an expedited final review

When the preliminary technical determination becomes a final NRCS technical determination, either through field review, reconsideration, mediation, or an expedited final review, the following appeal rights must be provided:

- a. Informal appeal to either the FSA-COC or the NRCS STC, but not both
- b. Formal appeal to the National Appeals Division (NAD)

When the final technical determination becomes a final USDA decision, then FSA can use the final USDA technical determination as the basis for its program decisions.

(A) Eligibility for HEL Practices

- **General.** The Pennsylvania Lower Susquehanna River Basin Conservation Reserve Enhancement Program (CREP) agreement was the first CREP in the Nation to include highly erodible land (HEL) practices as part of the agreement. When NRCS determines whether a field is eligible for one of the HEL practices, the weighted average erodibility index (E.I.) for all soils within that field are calculated using the Universal Soil Loss Equation (USLE), and not the Revised Universal Soil Loss Equation (RUSLE) or RUSLE2. However, the most recent soils values in eFOTG are the values used for the USLE variables.

NOTE: Despite the use of USLE for eligibility determinations, RUSLE2 is used for development of CRP conservation plans and for PRS reporting.

- NRCS personnel are expected to use their best professional judgment when making all E.I. eligibility determinations. This may mean taking extra slope measurements to be sure that the resultant calculations best reflect field conditions.

- **The “Creperator”.** Creperator is an optional tool developed specifically to assist PA NRCS personnel in making the eligibility determinations for CREP, and thus incorporated the USLE variables in its development. While the Creperator is capable of assisting with other calculations needed in CREP, such as estimating the soil rental rate for the field, its official use is limited to assisting with eligibility determinations.

While Creperator has the capability to calculate the estimated soil rental rate based on the three predominant soils, unless the soil rental rate table reflects current FSA soil rental rates, these calculations are inaccurate. Therefore, NRCS staff are not to utilize the soil rental rate capabilities of Creperator. It is FSA’s responsibility to determine the soil rental rate for its participants.

(B) Eligibility for Buffer Practices

- **General.** NRCS is responsible for determining whether the conservation practice is needed and feasible to address a resource concern, based upon the current conditions of the site. Where noxious or invasive species are not under adequate control and it would be difficult or impossible to control during the proposed contract period and the proposed CRP Conservation Practice, NRCS cannot determine that the successful establishment of a buffer of native species is feasible. Therefore, where more than 30% of the site is currently infested with noxious and invasive plant species, the site should be determined ineligible. Additionally, there may be site-specific instances where infestation of less than 30% may be determined to prevent successful establishment.

- **CP22.** NRCS must determine whether a riparian buffer is needed and feasible to solve the resource concern, and that the existing trees, if any, are not functioning as a riparian buffer. If the site has at least a 35-foot width of trees with a 30% canopy of healthy, predominantly native species, it is not eligible for CP22 because it is already functioning as a buffer. The width of any planned buffer shall not be less than 35 feet. Additional cost-share from partnering organizations may be available if the buffer is at least 50 feet in width. The measurement of width begins at the top of stream bank measured horizontally on a line perpendicular to the stream bank.

Additionally, depending upon the size of the area proposed for buffer, implementation of exceedingly small areas of CP-22 may not address a resource concern, and the site should be determined ineligible. This may apply to situations where there is little or no existing buffer and also to situations where most of the stream is adequately buffered, because the proposed buffer may be too small to address a resource concern in either case.

- **CP29 and CP30.** CP-29 and CP-30 are practices to address resource concerns related to water quality on marginal pasture while restoring and enhancing wildlife habitat. FSA has final responsibility for determination of land as eligible marginal pasture. If the site is currently not part of a pasture operation, then the site is not eligible, even if the landowner expresses a desire

to convert adjacent areas to a pasture operation in the near future and thus create a future potential water quality issue where one currently does not exist. Abandoned pasture may be eligible if the applicant is willing to change the management of the site and improve wildlife habitat. FSA may approve a landowner request to change the status of cropland or hayland to marginal pasture and the area will be eligible for these practices where there is a water quality concern that may be addressed. In these situations, NRCS should not assume responsibility for determining that fence is a required component since livestock are not currently present on the site.

(C) Eligibility Determination differences between the three PA CREP Agreements.

- Under the Lower and Upper Susquehanna River Basin CREP agreements, if the field is predominantly (i.e. greater than 50%) within 180 feet of a stream, no minimum EI is required for the entire field to be eligible. Under the Ohio River Basin CREP agreement, only land within 180 feet of a stream does not have a minimum E.I. requirement. All cropland between 180 feet and 1,000 feet of a stream must have a weighted average E.I. ≥ 8 , and a weighted average E.I. ≥ 12 if further than 1,000 feet from a stream.

- CP3A is an eligible practice under the Lower and Upper Susquehanna River Basin CREP agreements, but is not an eligible practice under the Ohio River Basin CREP agreement.

- The Upper Susquehanna River Basin CREP agreement and the Ohio River Basin CREP agreement offer varying incentive soil rental rates for the HEL practices dependent upon the EI, while the Lower Susquehanna River Basin CREP agreement has a flat incentive soil rental rate for the HEL practices. All three CREP agreement areas have flat incentive soil rental rates for the buffer practices.

(2) Conservation planning

(A) General for all practices. All NRCS conservation planning policies and procedures, including policies in the National Planning Procedures Handbook, Field Office Technical Guide, and the Engineering Field Manual, apply to planning and application done with landowners who have applied for enrollment in CRP/CCRP/CREP. These procedures include conducting a PNDI search, completing the environmental evaluation checklist and cultural resources review form, and conducting appropriate inquiries based upon information presented.

(B) Weed Control. Noxious weeds, as listed under the Pennsylvania Noxious Weed Control Act of 1982-74, must be controlled as a contract requirement. Plants that are considered to be Invasive Species but are not Noxious Weeds, are not required to be controlled, although landowners should be encouraged to control them.

As of January 2007, Pennsylvania Noxious Weeds include:

1. *Cannabis sativa*, commonly known as Marijuana
2. *Cirsium arvense*, commonly known as Canadian thistle
3. *Rosa multiflora*, commonly known as Multiflora rose
4. *Sorghum halepense*, commonly known as Johnson grass
5. *Polygonum perfoliatum*, commonly known as Mile-a-minute
6. *Pueraria lobata*, commonly known as Kudzu-vine
7. *Cirsium vulgare*, commonly known as Bull or Spear Thistle
8. *Carduus nutans*, commonly known as Musk or Nodding Thistle
9. *Sorghum bicolor*, commonly known as Shattercane
10. *Datura stramonium*, commonly known as Jimsonweed
11. *Lythrum salicaria*, commonly known as Purple Loosestrife, all cultivars
12. *Heracleum mantegazzianum*, commonly known as Giant Hogweed
13. *Galega officinalis*, commonly known as Goatsrue

(C) Mowing Restrictions.

- Establishment Mowing: Mowing is authorized on CRP/CREP acreage during the establishment phase, even during the nesting and brood-rearing season. The mowing criteria set forth in the conservation plan for a conservation practice should relate to how mowing can assist the cost-shared planting by removing competition from other vegetation.

- Maintenance Mowing Restrictions: Mowing is not generally necessary to maintain the cover after the stand is established. Mowing after establishment is prohibited on the buffer practice acreage. Mowing may be recommended in a conservation plan for the HEL practices to control the invasion of woody vegetation, but cannot exceed the frequency, intensity or extent specified in the recommended standard narrative for the particular practice. Participants must comply with state noxious weed laws, local ordinances, or other weed problems as determined by the FSA County Office Committee (COC). Any authorized mowing must be conducted outside the primary nesting and brood-rearing season, April 1 – July 31. CRP/CREP participants must request and receive approval from the COC before beginning spot mowing of noxious weeds during the primary nesting and brood-rearing season. Participants may use spot spraying to control noxious weeds without prior COC approval. Spot treatment is limited to the effected areas of the field and should result in as little damage to nesting wildlife as possible.

- Field Border and Burn Barrel Restrictions: FSA state policy permits, if needed, mowing field borders to control woody vegetation, no more frequently than every other year.

Anything more than this is not allowed by FSA policy. Narratives may allow border mowing no more frequently than every other year, and only where the natural establishment of woody vegetation is a site specific concern. In most circumstances, border width should be limited to 20 feet and should never exceed 30 feet. This allowance applies only to field edges next to a woodland or a dense woody fencerow; it should not be applied to entire fields if there is no adjacent woody vegetation. The control of woody vegetation in the interior of the field shall be handled through approved herbicide application or mowing no more frequently than specified by the rotational mowing provision in the recommended standard narratives. CRP policy does authorize a 20-foot wide border mown annually ONLY where there are site-specific, valid concerns about unintentional fires, i.e. a burn barrel starting a fire in an adjacent field planted to native warm season grasses.

- Exception to Mowing Restrictions: Grass Waterways, CP-8a, can be mowed as needed by the participant to maintain a thick sod cover. Unlike most other CRP practices, grass waterways do not have any restriction applied to when or how often they can be mowed due to their low potential wildlife habitat value. Narratives in conservation plans can be worded to reflect this operation and maintenance recommendation. Additionally, CP-12, can be mowed as needed to maximize food benefit for target wildlife species.

(D) CP-4D Permanent Wildlife Habitat. In Pennsylvania, CP-4D is used to established a predominantly grassland habitat with a woody component, analogous to a savannah-like environment. Trees, shrubs, or a mix of trees and shrubs should constitute only 10-15% of the site, but in all cases no more than 20%.

(E) CP-12 Wildlife Food Plot. According to Appendix 9 of 2-CRP, wildlife food plots shall not exceed 5 acres in size and shall not be immediately adjacent. For the CREP program in Pennsylvania, food plots must be planned in order to maximize specifically grassland habitat and associated grassland wildlife benefits.

For CREP the extent of annual wildlife food plots will not exceed two percent, or 1/2 acre per 20 acres, of contiguous HEL land enrolled. When CP1 is being enrolled on a tract, if there is a desire to include perennial forage food plots, this will be incorporated into the seeding of the CP1 acreage: timothy and/or orchardgrass with legumes such as clovers and/or birdsfoot trefoil.

(F) CP-23 Wetland Restoration. The following guidance was developed with partner agencies and non-governmental organizations. Individual criterion may be waived on a case-by-case basis by NRCS ASTC - Programs or FSA Conservation Chief, except for the hydric soil requirement:

- Wetland restoration projects will only be planned on areas that include hydric soils.
- Wetland restoration projects with embankments will not be planned on areas where the predominant slope is over four percent.
- Embankment projects where the predominant slope is between two and four percent will be submitted to the respective State Office for case-by-case approval.
- There will be no water deeper than six feet, based on normal pool elevation.

- Wetland restoration projects will not be planned with embankments over five feet in height.
- Projects where the planned embankment height will be between three and five feet will be submitted to the respective State Office for case-by-case approval.
- Wetland restoration projects with embankments will not be planned where the wetland surface area at normal pool elevation would be less than one acre. This one acre minimum does not include saturated soil fringes above normal pool elevation.
- For embankment projects, at least 60 percent of the planned wetland surface area at normal pool elevation will have water depths of 18 inches or less (no more than 40% of the surface area is over 18 inches deep).
- Embankment projects where more than 40 percent of the planned wetland surface area at normal pool elevation will be over 18 inches deep will be submitted to the respective State Office for case-by-case approval.
- Practices must meet PA NRCS standards and specifications in eFOTG.

DEFINITIONS

- *Hydric soils* are hydric soil map units in NRCS soil surveys. When hydric soil inclusions are indicated in soil map units, or suspected in soil map units which are not designated by NRCS as having hydric soil inclusions, an on-site investigation will be conducted by a Soil Scientist to determine the presence and extent of any hydric soil inclusions.
- *Predominant slope* refers to the existing slopes, and only to the area below planned normal pool elevation. In all cases, at least 50 percent of this area must be no greater than the designated percent slope, i.e. four percent or two percent.
- *Normal pool elevation* refers to the planned elevation of the inlet of the principal spillway (or the top of the highest “stop log”).
- *Embankment height* refers to the maximum design height in the center of the planned embankment to the area(s) of lowest existing normal ground elevation(s). Lower elevations in areas such as existing ditch channels are ignored.

(G) Contract Support Document.

The Contract Support Document provides the participant with estimates of the total costs of implementing each of the NRCS conservation practices in the plan and subsequent CRP/CREP Contract. The cost basis for developing the Contract Support Document is to be based on the CRP/CREP cost list uploaded into Customer Services Toolkit and in effect at the time. This cost list is based upon the FSA state average costs for the practices.

The Contract Support Document should be prepared separately from the conservation plan narratives. Conservation plan narratives should not appear solely on the Contract Support Document.

FSA at the State Level has requested that NRCS provide the Contract Support Document as part of our planning assistance and has assisted in the development of the CRP/CREP cost list. Local offices are not to change these amounts or require NRCS to provide in a different format since these are a planning estimate only. The NRCS planner is not required to sign the Contract Support Document. The local FSA office may request the participant to sign or develop more locally adapted procedures.

(H) Mid-Contract Management. The purpose of the mid-contract management activities developed for Pennsylvania and approved by the State FSA Committee is to improve wildlife habitat on enrolled lands by increasing plant diversity and habitat through various disturbance activities. Thus, the approved mid-contract management activities on introduced grasses (e.g., CP1) are intended to provide either enhanced plant heights with the soil amendment activity alone or increased plant diversity with the other two activities (mowing and light disking, or burning and light disking). The combination of both soil amendment and disturbance activities for introduced grasses is intended to both increase plant diversity and increase plant heights, providing the greatest wildlife habitat benefit; and therefore, it is intended to be used wherever applicable. Mid-contract management on native grasses (e.g., CP2) is intended to provide increased plant diversity and habitat with all activities.

The Pennsylvania FSA State Committee limits the mid-contract management activity of light disking to individual soils with an Erosion Index (E.I.) of 12 or less for practices CP1 and CP10, or only on soils with an E.I. of 20 or less for practices CP2 and CP4D seeded to native warm-season grasses. Please note that the limitation for use of light disking applies to “soils with an E.I. of X amount” and not to “fields with a weighted E.I.” as is used for eligibility purposes. Where the E.I. of a particular soil within the field precludes light disking as part of the mid-contract management activity for the entire field, planners will identify areas within the field where light disking is applicable and practical to perform based upon the size and configuration of these areas.

When entire fields cannot be light-disked, identifying areas where light disking is applicable and practical to perform can be accomplished through the “make your own polygon” function in Customer Service Toolkit, or through marking the resultant hard copy conservation plan map directly. It may be helpful to landowners for planners to include a separate mid-contract management map to clearly identify those areas where light disking is applicable. The planner should then customize the standard narrative to refer to the marked areas on either the conservation plan map or the mid-contract management map.

Soil amendments alone are only authorized on CP1 and CP10 where the individual soils have an E.I. greater than 12. Please also note that the additional mid-contract management options are combinations of mowing and light disking, burning and light disking, or mowing and spraying herbicide. Burning alone is not eligible as a mid-contract management activity. Additionally, mowing or burning must precede light disking or spraying herbicide.

(3) Implementation Assistance.

(A) Certification of Conservation Practices

FSA will provide form AD-862 to NRCS for practice certification for the following practices:

- CP8a – Grass Waterway
- CP9 – Shallow Water Area for Wildlife
- CP15A – Contour Grass Strips
- CP21 - Filter Strips
- CP22 – Riparian Buffers
- CP23 – Wetland Restoration
- CP29 – Marginal Pastureland Wildlife Habitat
- CP30 – Marginal Pastureland Wetland Buffer

All other practices may be self-certified by the program participant.

(4) Status Reviews and Follow-Up.

(A) General. NRCS has agreed at national level to complete annual status reviews on up to 10% of CRP, Continuous CRP and CREP contracts. FSA is to provide a list of contracts for 10% annual status reviews by April 1 of each year. The pool of contracts to be selected for status reviews are to come from CRP-1's approved in the prior fiscal year. Subject to time and funding, NRCS can conduct follow-up visits with landowners beyond the 10% level, and will complete a status review when formally discussing conservation plan and contract performance and maintenance issues.

Contracts selected for status reviews should not have been finalized by a previous status review and should not be older than 3 years. Contracts should include practices which require NRCS certification such as buffer or engineering practices; if these are not enough to make up the 10% sample then contracts including CP2, Establishment of Permanent Native Grasses, should be selected. When scheduling a visit with the participant please coordinate the visit with FSA to avoid duplication of services.

When doing the review, review all practices in the contract and review all contracts on the tract being reviewed. Use form NRCS-LTP-13 to document the review, have it signed by the participant and by NRCS. Upon completion of the visit, provide FSA with a copy of the review. If you discover conservation plan or contract deficiencies or violations (noxious weeds, unauthorized mowing/harvest, etc.), note the technical nature of these on the status review. Do not write comments on the status review regarding contract violations and penalties; but do discuss these with the County FSA Office. It is the FSA County Committee's responsibility to take specific actions when CREP participants are not taking necessary actions to establish and maintain practices.

(B) CP-22 Establishment. Practice CP22 must have trees or trees and shrubs established. The practice is considered established if, after three years, the number of planted and natural regenerated native seedlings surviving on the site is at least 70% of the number of

seedlings originally planted. EXAMPLE: If 100 seedlings are planted, and after 3 years, 50 of the original seedlings survived and 22 native seedlings regenerated, then the site can be considered established. However, if after 3 years, only 65 of the 100 seedlings originally planted survive and no native seedlings regenerated, then the practice may be considered not established and the participant may be required to plant up to 100 trees or trees and shrubs.

(5) Progress Reporting

NRCS receives reimbursement from FSA for the technical assistance it provides. Documentation of work done by NRCS is important to justify funding provided by FSA. PRS currently has ability to track number of eligibility determinations completed; acres of land planned; and practices applied. Eligibility determinations are required to be entered lump sum directly into PRS. The number of acres planned and acres of practices applied are reported into PRS from Customer Services Toolkit.

Field offices should maintain their ledgers of the applicants and participants for whom they provided assistance as back-up documentation for the PRS reporting. While the number of Status Reviews is not a reportable progress item in the NRCS system, field offices should also report to the CRP/CREP Coordinator the number of Status Reviews completed each fiscal year.

EXHIBITS available for download at:

http://www.pa.nrcs.usda.gov/intranet/general_manual/index.html

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