

REVISION TO THE AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE,
THE COMMODITY CREDIT CORPORATION,
AND
THE STATE OF MARYLAND
CONCERNING THE IMPLEMENTATION OF
THE MARYLAND CONSERVATION RESERVE ENHANCEMENT
PROGRAM

This Agreement is entered into between the U.S. Department of Agriculture (USDA), the Commodity Credit Corporation (CCC), and the State of Maryland (Maryland) for certain purposes in the vicinity of the Chesapeake Bay under the Conservation Reserve Enhancement Program (CREP). The CREP is part of the national Conservation Reserve Program (CRP) operated by the Farm Service Agency of USDA for CCC. For all new CRP contracts entered into this CREP after approval and implementation of this Agreement (including new CRP contracts for lands reenrolling in the Maryland CREP), this Agreement supersedes all earlier CREP Agreement provisions between USDA, CCC and Maryland. For all existing CRP contracts, entered into this CREP before this Agreement, the earlier Agreement provisions will continue to apply and be adhered to between USDA, CCC and Maryland during the life of those CRP contracts.

I. PURPOSE

The Chesapeake Bay is a natural resource of national significance that is recognized by the Conservation Reserve Program (CRP), authorizing legislation as an area of special environmental sensitivity.

USDA, CCC, and Maryland, in cooperation with other Federal, State, and local authorities, seek to take actions that will help reduce the occurrence of runoff, sediment, and nutrient accumulation in the Chesapeake Bay and that will promote enhanced wildlife habitats. This Agreement is not intended to supersede any rules or regulations, which have been, or may be, promulgated by either USDA or CCC. This Agreement is intended

to facilitate existing authorities through a cooperative effort of USDA, CCC, and Maryland.

It is further intended that this CREP, taking into account previous enrollments, will seek to achieve the following objectives:

1. Reduction of nutrient pollution from agricultural lands of approximately 11,500,000 pounds of nitrogen and 1,100,000 pounds of phosphorus on an annual basis.
2. Reduction of sediment loading into streams from agricultural lands of approximately 200,000 tons of sediment on an annual basis.
3. Increase in the survivability, distribution, and abundance of targeted fish, wildlife and plant species in the Chesapeake region. Emphasis for Rare and Declining Species Habitat enrollments will be given to high priority species listed under the North American Waterfowl Management Plan and State and Federally-listed threatened or endangered species, such as bald eagles, Delmarva fox squirrel, Eastern bog turtle, dwarf wedge mussel, glassy darter and harparella.

II. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 *et seq.*) and the regulations at 7 CFR part 1410 to perform all its activities contemplated by this Agreement.

The Maryland Department of Agriculture (MDA) is authorized to pay cost share and provide in-kind services under the Annotated Code of Maryland Agricultural Article 8-(701-705). The Maryland Department of Natural Resources (DNR) is authorized to implement the CREP easement program and provide in-kind services under the Annotated Code of Maryland Natural Resources Article, 5-901 *et. seq.* and 5-1202(a).

III. PROGRAM ELEMENTS

USDA, CCC, and Maryland agree that:

- A. The Maryland CREP will consist of a continuous sign-up CRP component and State of Maryland incentives. The Maryland CREP will enroll no more than 100,000 CRP acres at any one time, which includes acres enrolled under the previous Maryland CREP

Agreement. The CRP contracts for acres enrolled in this CREP will be for a period of 10 (ten) to 15 (fifteen) years.

- B. Eligible cropland or marginal pastureland (MPL) may, on a continuous basis, be enrolled in the Maryland CREP if it meets land eligibility criteria, and conservation practice criteria, as determined by CCC and in accordance with FSA CRP National Directives and this Agreement.
- C. Any acres enrolled under the previous Maryland CREP, that are under a contract that expired on or after September 30, 2008, may be reenrolled, on a continuous basis, in the Maryland CREP if they satisfy the conservation practice criteria that applied at the time of original enrollment. Such reenrollment will be at the annual payment rates described in paragraph IV of this Agreement subject to the limits there and provided that all offer submission deadlines and other requirements of FSA CRP National Directives are met. For purposes of this Agreement, the term “new enrollments” will not include these enrollments.
- D. Conservation plans for the land enrolled in the CRP under the Maryland CREP must meet the criteria of the CRP regulations, 2-CRP, and FSA CRP National Directives. Acreage enrollment authority and targets for land to be enrolled pursuant to this Agreement will be for:
- (1) Up to 77,000 eligible Riparian acres, which includes acres enrolled under the previous Maryland CREP Agreement, which will be eligible to be enrolled adjacent to streams, wetlands or other water bodies under the following practices:
- CP4D (Permanent Wildlife Habitat) (cropland only)
 - CP21 (Filter Strips) (cropland only)
 - CP22 (Riparian Buffers), (cropland & MPL)
 - CP29 (Marginal Pastureland Wildlife Habitat Buffer) (MPL only)
 - CP30 (Marginal Pastureland Wetland Buffers) (MPL only)

Each buffer must have a minimum average width of 35 feet.

- a. CREP offers for these buffer practices of up to 100 feet maximum average width will be eligible in all Maryland counties, without any region-specific total enrollment restriction, according to FSA CRP National Directives.
- b. In the region covering Cecil, Kent, Queen Anne, Caroline, Talbot, Dorchester, Somerset, Worcester and Wicomico counties, CREP offers for these buffer practices wider than 100 feet, up to a maximum of 250 feet,

based on average width, will only be eligible for land determined to be Highly Erodible Land (HEL) or for acres with a specific species wildlife plan. Such practices may not exceed 1,000 total acres enrolled in the region, excluding already enrolled acres and reenrolling acres. *(This 1,000 acre total regional enrollment restriction for buffer offers in excess of 100 feet will only apply to new enrollments beginning after this Agreement is approved).*

- c. In the region covering Harford, Baltimore, Carroll, Howard, Montgomery, Anne Arundel, Prince George's, Charles, Calvert, St. Mary's, Frederick, Washington, Allegany and Garrett counties combined, CREP offers for these buffer practices wider than 100 feet, up to a maximum of 250 feet, based on average width, may be eligible only with a specific species wildlife plan, or where additional water quality benefits can be derived due to floodplains, hydric soils, or HEL. Such enrollment may not exceed 4,000 total acres enrolled in the region. *(This 4,000 total regional enrollment restriction for buffer offers in excess of 100 feet will only apply to new enrollments beginning after this Agreement is approved.)*
- d. For purposes of this CREP, land in offers for buffers along channelized intermittent streams and in-field constructed drainage ditches will be eligible under practice CP21, Filter Strips. Practice widths for these buffers may not exceed a maximum average width of 35 feet, and will otherwise be established according to FSA CRP National Directives and Natural Resources Conservation Service's (NRCS) standards for similar enrollments.

(2) Up to 16,000 eligible HEL acres, which includes acres enrolled under the previous Maryland CREP Agreement, of land considered excessively erodible (as defined in subparagraphs (a) and (b), below), and located within 1,000 feet of a stream or water body, will be eligible to be enrolled under the following practices:

- CP1 (Introduced Grasses/Legumes) (cropland only)
- CP2 (Native Grasses/Legumes) (cropland only)
- CP3 (Tree Planting) (cropland only)
- CP3A (Hardwood Tree Planting) (cropland only)
- CP4D (Permanent Wildlife Habitat) (cropland only)

- a. In the region covering Cecil, Kent, Queen Anne, Caroline, Talbot, Dorchester, Somerset, Worcester, Wicomico counties, CREP eligibility for HEL acres only extends to lands with a weighted average erodibility index

of 8 or greater as determined by NRCS.

- b. In the region covering Harford, Baltimore, Carroll, Howard, Montgomery, Anne Arundel, Prince Georges, Charles, Calvert, St. Mary's, Frederick, Washington, Allegheny and Garrett counties combined, CREP eligibility for HEL acres only extends to lands with a weighted average erodibility index of 16 or greater as determined by NRCS.

(3) Up to a total of 5,000 eligible Wetland acres, which includes acres enrolled under the previous Maryland CREP Agreement, to achieve water quality benefits for the program objectives of nutrient and sediment reduction and wildlife habitat enhancement, and to assist the Chesapeake Bay Agreement's goal of restoring 25,000 acres of wetlands, will be eligible to be enrolled under the following practices:

- CP9 (Shallow Water Areas for Wildlife) (cropland only)
- CP23 (Wetland Restoration) (cropland only)
- CP23A (Non-Floodplain Wetland Restoration) (cropland only)

- a. Enrollments under CP9 may not exceed 50 acres per FSA tract, with each tract limited to two CRP contracts (CRP-1's), and must be also designed to achieve water quality benefits.

- b. Buffers around a CP9 may not be less than an average width of 35 feet, not to exceed a maximum average width of 100 feet, and be otherwise in accordance with Handbook 2-CRP and NRCS standards for similar enrollments.

- c. For purposes of this CREP, land eligible for CP23 (Wetland Restoration) and CP23A (Non-Floodplain Wetland Restoration), will be cropland eligible for CP23 or CP23A as provided for in National CRP Directives.

(4) Up to 2,000 eligible Rare and Declining Species Habitat acres, which includes any acres enrolled under the previous Maryland CREP Agreement, of land designated by the Maryland CREP Technical Committee to establish habitat for declining species such as Eastern Bog turtles, will be eligible to be enrolled under the following practice:

- CP25 (Habitat for Declining Species) (cropland only)

Subject to any limits that may apply under the Federal Advisory Committee Act (FACA) or other laws, the Maryland CREP Technical Committee will be

used to establish suggested technical criteria for this practice, which will then be submitted to the Deputy Administrator for Farm Programs for approval.

- a. Up to a total of 500 of these acres may be enrolled in Cecil, Kent, Queen Anne, Caroline, Talbot, Dorchester, Somerset, Worcester, and Wicomico counties, combined.
- b. Up to a total of 1,500 of these acres may be enrolled in Harford, Baltimore, Carroll, Howard, Montgomery, Anne Arundel, Prince George's, Charles, Calvert, St. Mary's, Frederick, Washington, Allegany, and Garrett counties, combined.

IV. FEDERAL COMMITMENTS

Subject to the availability of funds and statutory limitations, USDA and CCC agree to:

- A. Determine applicant eligibility for participation in the CREP. Nothing in this Agreement will in any way limit CCC's ability to deny an application for enrollment.
- B. Have CCC pay CREP participants 50 percent of the reimbursable costs of establishing eligible conservation practices as provided for in FSA CRP National Directives. Reimbursable costs paid to the eligible producer, from all sources, will not exceed 100 percent of the producer's eligible out-of-pocket expenses.
- C. Have CCC, for new enrollments, make annual rental payments otherwise applicable to the land under CRP contract according to FSA CRP National Directives, plus, to the extent they are not duplicative of elements otherwise taken into account for normal enrollments, incentive payments and maintenance payments as provided for in paragraphs D, E, F, G, and H, respectively, of this section. For Marginal Pasture Land (MPL), the base rental rates for cropland will be used.
- D. As part of the annual rental payment, have CCC make incentive payments as a percentage of the weighted average soil rental rate based on the three predominant soils offered, in an amount equal to:
 - (1) For cropland to be enrolled to the following practices, 80 percent:
 - CP1
 - CP2
 - CP3
 - CP3A
 - CP4D (HEL enrollments per Section III (D)(2) of this Agreement)

- (2) For cropland to be enrolled to the following practice, 100 percent:
 - CP9

- (3) For MPL to be enrolled to the following practices, 100 percent:
 - CP29
 - CP30

- (4) For cropland to be enrolled to the following practices, 150 percent:
 - CP21
 - CP25
 - CP4D (Wildlife Habitat Buffer enrollments per Section III(D)(1) of this Agreement)

- (5) For cropland and MPL to be enrolled to the following practices, 200 percent:
 - CP22
 - CP23
 - CP23A

These incentive payments will be considered to be, and treated as, rental payments for payment limitation purposes

- E. As part of the annual rental payment for new enrollments, make a maintenance payment according to FSA CRP National Directives. This maintenance payment will be considered to be, and treated as, a rental payment for payment limitation purposes.

- F. Consistent with FSA CRP National Directives, have CCC make up to a 50 percent cost-share payment for mid-contract management practices.

- G. Have CCC make, for new enrollments, a one-time Signing Incentive Payment (SIP) of \$100 per acre for the CRP practices listed below in accordance with FSA CRP National Directives (except CP9 enrollments will also receive SIPs). SIP allowances will be considered to be, and treated as, rental payments for payment limitation purposes:

- * CP9
- * CP21
- * CP22
- * CP23
- * CP23A
- * CP29
- * CP30

H. Make a one-time Practice Incentive Payment (PIP) equal to 40 percent of the cost of eligible reimbursable costs for establishment of approved conservation practices, for the CRP practices listed below in accordance with FSA CRP National Directives:

- *CP9
- * CP21
- * CP22
- * CP23
- *CP23A
- *CP29
- *CP30

This incentive payment will be considered to be, and treated as, a rental payment for payment limitation purposes.

- I. Work cooperatively with the State and producers in the development and review of conservation plans for land accepted for enrollment in the CRP under the Maryland CREP.
- J. On a continuous basis, enroll land that meets the eligibility criteria set forth in the CRP regulations at 7 CFR Part 1410 and this Agreement, up to 100,000 CRP contract acres, (including any acres enrolled under the previous Maryland CREP Agreement), for enrollment in the Maryland CREP.
- K. Conduct normal annual compliance reviews to ensure compliance with the CRP contract.
- L. In cooperation with Maryland, provide information to producers concerning the Maryland CREP and Maryland's CREP easement program, and provide technical assistance for implementing the Maryland CREP in general.
- M. Permit assignments of payments from CREP participants to Maryland only if the assignment is requested by the participant and CCC determines that such assignment will not be contrary to the federal government's interests.
- N. Permit succession-in-interest to CRP contracts enrolled under this CREP in the same manner as allowed for other CRP contracts.
- O. Administer CRP contracts for land approved for the CREP and provide information to the public regarding the amount of land enrolled in the CREP in accordance with the FOIA and Privacy Act.

- P. Accept offers by Maryland CREP participants to reenroll in this CREP in accordance with Section III, Paragraph C of this Agreement. Have CCC make annual rental, incentive and maintenance payments for reenrolled acres equal to the payments for acres newly entering the CREP, except that reenrolled acres will not be eligible for SIP and PIP payments.

V. STATE COMMITMENTS

Maryland agrees to:

- A. Seek applicants willing to offer eligible and appropriate land for enrollment in the Maryland CREP.
- B. Continue the voluntary program for the purchase of perpetual easements for CRP land. These easements will not require actions that are contrary to the CRP contract of the acreage unless agreed to by CCC. Such easements will provide for release of the acreage for crop production during the CRP contract period, if requested by the Secretary of Agriculture in response to a national emergency in which other participants may also be released from their CRP contract obligations. Such a release will be effective only for the period of the CRP contract unless otherwise agreed to by Maryland. The State may also purchase permanent easements on lands adjoining those lands enrolled in CREP, when such lands are required to facilitate management, or to better meet the conservation objectives of the program. Such adjoining acreage for each easement may not exceed the number of acres enrolled in the related CREP CRP contracts.
- C. Develop conservation plans according to Handbook 2-CRP, FSA CRP National Directives, and USDA policies for similar enrollments, for applicants offering to enroll eligible acreage in CREP.
- D. Identify up to 100,000 acres, which includes any acres enrolled under the previous Maryland CREP Agreement, for enrollment in the CREP.
- E. Pay 37.5 percent of the reimbursable installation cost of these eligible conservation practices:
- CP1
 - CP2
 - CP3
 - CP3A
 - CP21
 - CP22
 - CP23
 - CP23A
 - CP30

- F. For acreage enrolled in CREP, support technical assistance by the local soil conservation districts.
- G. Be responsible for coordinating its CREP with state and local agricultural land and natural resource conservation initiatives, including the Rural Legacy and Agricultural Land Preservation Programs.
- H. Have Maryland's Departments of Agriculture and Natural Resources each appoint an official primarily responsible for carrying out its duties under CREP. Maryland and USDA will form a committee consisting of representatives from USDA's Farm Service Agency and Natural Resources Conservation Service, soil conservation districts, and other interested groups to advise on the implementation of this CREP in accordance with applicable laws and procedures.
- I. Prepare an annual report to the public summarizing its CREP activities and setting out totals for annual and cumulative enrollments in the CREP, the costs of enrollments, and expected enrollments for the coming year. Maryland will also provide evaluation of the program to determine effectiveness of the CREP in achieving its goals and objectives. This report will provide a statistical summary of all Maryland easement enrollment related to this project, and Maryland's producer payments provided for in this paragraph. This report will be submitted in final form to FSA CREP Program Manager each year for the life of this project no later than December 31st each year.
- J. Develop and implement a monitoring program that will collect necessary information to determine whether the program objectives are being met. Results of this monitoring effort will be included in the annual report.
- K. Contribute not less than twenty (20) percent of the overall program costs of this CREP either through direct or in-kind support. Of this required 20 percent, not less than 10 percent of the total project costs will be in the form of either direct new payments to the participants and/or new funding for the CREP project.
- L. Pay a one-time, one-hundred dollar (\$100.00) per acre State bonus payment for every acre enrolled in the Maryland CREP after this Agreement is executed and for every acre reenrolled in the CREP under this Agreement.
- M. Allow participants who reenroll lands in this CREP to choose to participate in Maryland's permanent easement program.

- N. Temporarily release participants from any contractual restriction on crop production during the CRP contract period if such release is determined necessary by the Secretary of Agriculture in order to address a national emergency.

VI. MISCELLANEOUS PROVISIONS

- A. All CRP contracts under this Agreement will be subject to all limitations set forth in the regulations at 7 CFR Part 1410 including, but not limited to, such matters as economic use, transferability, violations and contract modifications. Agreements between participants and the applicable agencies of Maryland may impose additional conditions not in conflict with those applicable under the regulations at 7 CFR Part 1410, but only as approved by USDA.
- B. Neither Maryland nor USDA will assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.
- C. Easements or contracts entered into under the Maryland CREP may not be assigned or transferred without approval of the landowners.
- D. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee, or their successors, designees, or successors' designees, are authorized to carry out this Agreement and, with the Governor of Maryland, or the Governor's designees, successors, or successors' designees, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The provisions of this Agreement may only be modified by written Agreement between the parties.
- E. Maryland and USDA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and will not be responsible for the results thereof caused by the acts or omissions of the other party.
- F. Maryland and USDA agree to enter into a data sharing agreement to facilitate the evaluation of Maryland CREP offers and implementation of signed agreements. All of the parties to this Agreement agree to share the data, and keep the data confidential, in a manner that is consistent with State and Federal law, including but not limited to, Section 1619 of the Food, Conservation, and Energy Act of 2008, (Public Law 110-246, Section 2004 of Public Law 107-171, the federal Freedom of Information Act, federal privacy laws and other applicable laws, with Maryland to facilitate Maryland's review of offers and monitoring and evaluation efforts in accordance with this section.

- G. USDA may enter into CREP contracts for fully eligible persons and land provided that the CREP project 100,000 acre enrollment limit has not been reached, and that such actions are otherwise authorized by law, as determined by CCC.
- H. All financial commitments of the USDA/CCC and Maryland are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 days and any necessary modifications will be made to this Agreement.
- I. This Agreement may be terminated by either party at any time after written notice. Such termination of this Agreement will not alter responsibilities regarding existing contractual obligations established under the Maryland CREP between participants and USDA or CCC, or between participants and Maryland.
- J. If any clause of this Agreement will be found by a competent court of the federal or state jurisdiction to be void, that clause will be stricken from the Agreement and the rest and remainder of the Agreement will remain in effect or, if both parties will agree, the entire Agreement may be void, upon mutual consent of the parties.
- K. The State will notify participants that (1), U.S. Department of Agriculture prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status (not all prohibition bases apply to all programs); (2) Persons with disabilities who require alternative means for

communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at 202-720-5881 (voice) or 202-720-7808 (TDD); and (3) persons who wish to file a complaint can write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal opportunity employer.

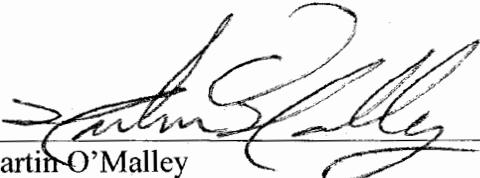
In Witness Whereof, the parties here to have set their hands as of the dates indicated herein below.



Tom Vilsack
Secretary of Agriculture
US Department of Agriculture
Commodity Credit Corporation

4-24-09

Date



Martin O'Malley
Governor, State of Maryland

4-24-09

Date

At the Richard Soper, Jr. Farm in Westminster, Maryland, the undersigned witnessed on April 24, 2009, the signing of the Revision to the Agreement regarding the Conservation Reserve Enhancement Program between the State of Maryland and the U.S. Department of Agriculture.

