

For: State and County Offices

**Operating Critical Feed Use Under a Permanent Injunction – Questions and Answers,
Refunding Administrative Fee, Appeals, and Reporting Requirements**

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

On May 27, 2008, Notice CRP-598 provided policy and procedure for the voluntary modification of CRP contracts for critical feed use.

On July 8, 2008, a Federal court granted a Temporary Restraining Order (TRO) that suspended authority to process or approve CRP-1M Addendum's and required that any critical feed use activity must immediately cease.

On July 24, 2008, Notice CRP-604 was issued stating the Federal court issued a Permanent Injunction, which permitted **certain** critical feed use to continue.

B Purpose

This notice provides:

- questions and answers
- guidance on refunding the administrative fee for withdrawn CFU modifications
- appeals
- reporting requirements.

Disposal Date	Distribution
March 1, 2009	State Offices, State Offices relay to County Offices and NRCS State Offices

Notice CRP-607

2 CFU Questions and Answers

A Providing Additional Information

See Exhibit 1 for question and answers for operating CFU under a Permanent Injunction.

3 Processing Refunds for Critical Feed Use Administrative Fee

A Administrative Fee

The CFU administrative fee may be refunded to CRP participants if the participants withdraw CRP-1M Addendum.

Notes: All refunds of CFU administrative fees must be paid to CRP participant(s) on a CRP contract without regard to who paid the administrative fee.

A future notice will provide guidance about refunding CFU administrative fees.

4 Appeal Rights

A Nonappealable Issues

Matters that are generally applicable to all producers are **not** appealable. As this is a matter of judicial order resulting from a permanent injunction, neither the criteria for participation in CFU in any of the Categories A, B, or C, nor the requirement that a producer fall into 1 of those 3 categories, is appealable. Therefore, no producer will be afforded appeal rights if their CRP-1M Addendum was **not** approved after a final determination that the participant did not meet the criteria for Categories A, B, or C.

Example: Hank Rancher is on a CRP contract with son, Hank Rancher, Jr., and he signed CRP-1M Addendum on July 2, 2008. The Ranchers request to be considered as Category B although Hank Rancher, Jr., did not sign the CRP 1M Addendum until July 9, 2008. There is no question that this was the case, and the Ranchers are not arguing otherwise. COC's must deny the request because it does not meet the terms of the permanent injunction as provided in Notices CRP-604 and CRP-606. COC's determination is final and is **not** appealable because Category B requirements are a matter of general applicability.

However, before such final determination, a producer may appeal the initial determination that he or she did not meet the criteria for Categories A, B, or C. Should such a dispute arise after the initial determination, the producer should be afforded the chance to prove that he or she does, in fact, fall into 1 of those 3 categories.

Notice CRP-607

4 Appeal Rights (Continued)

A Nonappealable Issues (Continued)

Example: Mary Producer submits documentation and a declaration to COC in support of a Category C approval. COC reviews the submission for reasonableness and determines that the documentation is not sufficient. That is their initial determination. Mary Producer feels that COC overlooked some of her documented expenses and wants a chance to prove that she did meet the Category C criteria. Mary Producer may appeal COC's determination that the documentation was insufficient.

5 Reporting Requirements of Haying and Grazing under Critical Feed Use

A Producer Report for Managed Haying and Grazing Frequency Purposes

Notice CRP-604 provided that CRP participants using CFU will "restart the clock" for future managed haying and grazing. Accordingly, those participants must report the number of acres hayed by contract number or grazed by **COB November 28, 2008**, using Exhibit 2.

B County Office Report

County Offices shall provide Exhibit 2 to the State Office by **COB December 15, 2008**, about the number of:

- CRP contracts for which a CRP-1M Addendum modification was approved and CFU haying or grazing occurred
- acres hayed under CFU authority
- acres grazed under CFU authority.

C State Office Report

State Offices shall provide Exhibit 3 to CEPD, Attention: Cynthia Beringer by **COB December 31, 2008**. Reports shall be e-mailed to cynthia.beringer@wdc.usda.gov

6 Action

A County Office Action

County Offices shall read and follow the provisions of this notice.

B State Office Action

State Offices shall ensure that County Offices follow the provisions in this notice.

CFU Questions and Answers

The following are the questions and answers discussed in the July 30, 2008, conference call.

Q1. About the requirement for Category C to have invested \$4,500 or more and to complete the declaration, does this have to be the CRP contract participant?

Example 1: A young operator (who is not enrolled in CRP) says he purchased a baler to hay CRP. He apparently had a verbal commitment from a CRP participant.

Example 2: A neighbor or relative (who is not enrolled in CRP) with cattle that was intending on using the hay for feed and already had a verbal agreement with a CRP contract holder.

Example 3: A livestock producer (who is not enrolled in CRP) incurred at least a \$4,500 investment in cattle and/or haying or fencing equipment on July 1, 2008, in anticipation of using several CRP participants CRP acreage under CFU for hay. However, the CRP participants did not sign CRP1-M Addendum by 5:00 pm, p.t., on July 8, 2008, but discussed and made arrangements with the livestock producer to hay their CRP under the CFU provisions.

A1. Only CRP participants are eligible for Category C authorization.

Q2. A producer intended to hay or graze acreage enrolled in CRP by a third party in addition to CRP acreage she has enrolled. She has a statement from the third-party owner that she can hay the third-party owner's CRP acreage. He has receipts for the \$4,500. Does she qualify for Category C? Does the third-party owner qualify for CFU?

A2. The producer should be evaluated under Category C for her acreage. Unless the statement was executed between May 27, 2008, and 5:00 pm, p.t., July 8, 2008, the third-party acreage is **not** eligible for Category C authorization.

Q3. Is anyone eligible for CFU in addition to CRP participants?

A3. No, only CRP participants are eligible for Category C authorization.

Q4. A producer is a 1 of 3 partners in a partnership. He also operates as an individual, has land enrolled in CRP, and purchased equipment (of at least \$4,500) between May 27, 2008, and 5:00 pm, p.t., on July 8, 2008. May the other partners and/or the partnership be included in the producer's reliance?

A4. No, because the partner was operating as an individual.

Q5. County Offices may have created a list or a register of producer names that were interested in applying for CFU but were unable to do so because of County Office workload or for other reasons. May these producer names be considered as having applied (i.e., Category B)?

A5. Only applications signed by all required CRP participants before July 8, 2008, are considered "filed" for Permanent Injunction purposes, therefore, Category C applies.

CFU Questions and Answers (Continued)

- Q6.** Two producers are participating on a CRP contract; however, only 1 signed CRP-1M Addendum before 5:00 pm, p.t., on July 8, 2008. Is this a Category B or Category C case?
- A6.** Only applications signed by all required CRP participants before July 8, 2008, are considered “filed” for Permanent Injunction purposes, therefore, Category C applies.
- Q7.** Producers may live a distance from the County Office and began the application; however, not all signatures were returned before 5:00 pm, p.t., on July 8, 2008. Should County Offices process under Category C provisions?
- A7.** Yes. Only applications signed by all required CRP participants before July 8, 2008, are considered “filed” for Permanent Injunction purposes.
- Q8.** If a producer paid the \$75 administrative fee but had not yet signed CRP-1M Addendum, before July 8, 2008, does she qualify as Category B?
- A8.** Payment of the fee must be paid **before** CRP-1M Addendum approval.
- Only completed applications signed by all required CRP participants and submitted to the county Office by 5:00 pm, p.t., on July 8, 2008, are considered “filed” for Permanent Injunction purposes.
- Q9.** There was no \$75 fee paid or CRP-1-M Addendum signed by the July 8th deadline but the CRP participant was working with NRCS in developing the Conservation Plan Modification. May this be considered Category B? What if the producer signed the Conservation Plan Modification before the July 8, 2008, deadline?
- A9.** No, only completed applications signed by all required CRP participants and submitted to the County Office by 5:00 pm, p.t., on July 8, 2008, are considered “filed” for Permanent Injunction purposes.
- Q10.** A producer was mailed the forms before July 8, 2008, and all partners signed on July 14, 2008. CRP-1M Addendum was returned on July 15, 2008. Is this contract eligible?
- A10.** Because only applications signed by all required CRP participants before July 8, 2008, are considered “filed” for Permanent Injunction purposes, Category C applies.
- Q11.** A producer’s relative picked up CRP-1M Addendum before July 8, 2008. She did not sign CRP-1M Addendum until July 12, 2008. Is she eligible?
- A11.** Because only applications signed by all required CRP participants before July 8, 2008, are considered “filed” for Permanent Injunction purposes, Category C applies.

CFU Questions and Answers (Continued)

- Q12.** I have 3 producers that requested CRP-1M Addendum and we provided it to them before the July 8, 2008, deadline. One producer is currently in Honduras. We e-mailed the forms to him. He signed the forms on July 8, 2008, and attempted to e-mail them back. The e-mailed forms were not readable on our end. On July 15, 2008, he was able to locate a FAX machine and faxed them to us. Is he eligible?
- A12.** Because only applications signed by all required CRP participants before July 8, 2008, are considered "filed" for Permanent Injunction purposes, Category C applies.
- Q13.** Producer A signs CRP-1M Addendum on July 4, 2008, but it is mailed back to the office and received (and dated stamped) in the office on July 17, 2008. Is Producer A in Category B?
- A13.** Because only applications signed by all required CRP participants before July 8, 2008, are considered "filed" for Permanent Injunction purposes, Category C applies.
- Q14.** When is an application complete?
- A14.** An application is complete when it has been fully completed, signed by all participants, and received by the County Office.
- Q15.** Is there any way a producer who contacted the office to sign-up for CFU before July 8, 2008, but, was told to come back later be considered for Category A or B? Or can he only be considered for Category C.
- A15.** Because only applications signed by all required CRP participants before July 8, 2008, are considered "filed" for Permanent Injunction purposes, Category C applies.
- Q16.** We have a producer that has signed a contract with a custom operator to both mow and bale his CRP acres. If performed, the total value of the contract will be in excess of \$4,500. Is that enough to release the acres under Category C?
- A16.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q17.** We just had a producer wanting to sign up in "Category C" because he bought \$4,500 worth of cattle on May 30, 2008. Does this qualify?
- A17.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q18.** A producer claims they destroyed 2 fields of hay and planted them to soybeans in anticipation of being able to harvest the CRP hay under the CFU provisions. A quick check of the acreage certification on file indicated the producer planted the beans on June 18, 2008, and June 20, 2008, well after the May 27, 2008, date. He would have well over the \$4,500 expense threshold in the cost of planting the beans. Does this qualify as "preparation" for being able to release the acres under Category C?
- A18.** Yes, provided expenditures were in reliance on Notice CRP-598.

CFU Questions and Answers (Continued)

- Q19.** Since counties had no reason to believe this application period was “time sensitive” there are a number of reasons we did not process an application to participate in the CFU provisions by the July 8, 2008, deadline. Does misaction/misinformation apply?
- A19.** Take the application and consider under Category C. Deny if application does not meet Category C criteria.
- Q20.** Springer Farms is owned by a husband and wife, has land enrolled in CRP, and purchased hay equipment in preparation for CFU. The owners also have other land enrolled in CRP. Does Springer Farms and the husband and wife each have to provide separate documentation meeting the \$4,500 level or can the expense be claimed for the corporation and its members?
- A20.** Each must justify the \$4,500 expenditure.
- Q21.** There was a listing on the CEPD web site dated July 15, 2008, and 1 dated July 23, 2008, listing CFU applications. The July 23, 2008, listing reflects corrections to acres made at the direction of CEPD and also includes applications that had not been loaded until that date. Can the July 23, 2008, listing be used for Category A and B producers, or do we have to revert back to applications listed as of July 15, 2008?
- A21.** Use the date on CRP-1M Addendum provided it was completed.
- Q22.** Does “preparation” include such expenditures as purchasing cattle, purchasing hay, cost of feeding winter hay stocks, application of fertilizer, and feed purchased?
- A22.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q23.** If a producer has 3 contracts for grazing can they use the same receipt for all 3 contracts on the cattle they purchased?
- A23.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q24.** I have a producer asking if the purchasing of cattle between May 27 and July 8, 2008, to graze CRP acreage is considered investment toward “preparation” according to Notice CRP-606, subparagraph 2 A, and suffice as documentary proof of investment?
- A24.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q25.** A producer indicated she purchased a new truck to haul hay and another producer he was planning on haying CRP so he planted corn rather than feed in early June 2008. Do either of these qualify as reliance on Notice CRP-598? If they purchased additional fuel, made machinery repairs, etc., can these items be used?
- A25.** Yes, provided expenditures were in reliance on Notice CRP-598.

CFU Questions and Answers (Continued)

Q26. How does the producer certify to the \$4,500 if he owns the CRP land, has his own equipment, provides his own labor, and feeds the hay harvested to his own livestock? Would he certify to item 4 on the declaration? Does he come up with his own dollar value using his own equipment and labor?

A26. The participant should use item 4 of the declaration to describe his/her reliance on Notice CRP-598 using his personal labor/materials. COC must review for reasonableness the proof of investment and declaration using 2-CRP, paragraph 485.

Q27. Because of a delay in the accounting software and a delay in CFU job sheet distribution by NRCS, some participants delayed action. Is there any relief for these participants?

A27. No, Category C applies.

Q28. Notice CRP-606 does not state that the hay must be off and the livestock removed but was included in the original Notice CRP-598. We believe that it was the intent of Notice CRP-606 to have everything off of the CFU land but we could ask for clarification.

A28. Any hay and any livestock must be removed by the applicable date according to Notice CRP-604 and Notice CRP-606.

Q29. What exactly does the \$4,500 or more cost include and what is considered as significant reliance and what documentation is required? Is it only for expenses related to the CRP acres or is it for other items? For instance, can the expenses incurred for the tillage and reseeded of pasture land in anticipation of being able to use CRP-CFU for haying and grazing count towards the \$4,500?

Can the purchase of fuel, twine, etc. be considered an investment or preparation as a result of showing significant reliance on Notice CRP-598?

Does a purchase agreement for haying equipment (showing a trade-in) count towards the \$4,500 significant reliance provisions?

A29. To be considered, the expenditures must have been in reliance on Notice CRP-598.

Q30. The producer has turned down a major purchase of hay in anticipation of CFU. How can he submit this for Category C?

A30. The participant should use item 4 of the declaration to describe his/her reliance on Notice CRP-598. COC must review for reasonableness the proof of investment and declaration.

Q31. Discuss the importance of the documentary evidence and what is the possibility of the Court's inspection as outlined in the Court order?

A31. STC's, COC, and State and County Offices shall assume there is a 100 percent chance of review.

CFU Questions and Answers (Continued)

- Q32.** Are we going to have producers come in and verify their acres hayed or grazed as we do with Managed Haying and Grazing if the acres will “restart the clock”?
- A32.** Yes, see paragraph 5 and Exhibit 2.
- Q33.** If a CRP participant hays the acreage under the CFU provisions, is it correct that the same acreage will be available for managed haying and grazing in FY 2011? In addition, would the 50 percent of the field left for wildlife under the CFU provisions in FY 2008 be eligible for either the managed haying or grazing before FY 2011?
- A33.** Managed haying and grazing frequencies of 2-CRP, Part 13, apply.
- Q34.** Would the purchase of calves in an amount exceeding \$4,500 with the intent of grazing them on CRP be considered as an eligible “action taken in significant reliance” to make a producer eligible for CFU under Category C?
- A34.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q35.** If a producer has a 100-acre field and is going to hay 50 acres, does the 50 acres or 100 acres count toward future managed haying/grazing?
- A35.** The 50 acres actually hayed and the 50 acres reserved for wildlife, or 100 acres, counts toward future managed haying/grazing.
- Q36.** What if a producer has a loss because of CFU but not a documentable purchase? Such as moved cattle off of depleted pasture to their hay ground in anticipation of using their CRP acreage because of the CFU notice. Now, they do not have hay.
- A36.** The participant should use item 4 of the declaration to describe his/her reliance on Notice CRP-598. COC must review for reasonableness the proof of investment and declaration.
- Q37.** Is FSA required to determine the declaration is reasonable or truthful before approving the Category C applications?
- A37.** Yes, COC’s must review for reasonableness.
- Q38.** Notice CRP-604 refers to 5:00 p.m. pacific **standard** time. I think Seattle was on pacific **daylight** time on July 8, 2008. This probably won’t be an issue, but there is 1 difference.
- A38.** 5:00 p.m. **local** pacific time.
- Q39.** Would you define producer as used in this policy?
- A39.** CRP participants.

CFU Questions and Answers (Continued)

- Q40.** If producers want to file an application under Category B or C should the County Office take the application, evaluate and if the criteria aren't met deny and give appeal rights?
- A40.** Take the application package and deny.
- Q41.** Does "investment" mean money had to change hands, contracts, and/or other forms of legal obligation?
- A41.** Legal obligation is the standard.
- Q42.** If a person was approved for CFU grazing (Category A) on the Conservation Plan but now wants to hay, is this permissible since the Conservation Plan will have to be revised to hay? And, if this can be done does the final hay date remain November 10, 2008, or does it revert to September 30, 2008?
- A42.** Yes, this modification is acceptable. The haying and grazing end dates for the Category would continue to apply.
- Q43.** After I sent the above information to the counties a CED asked that if a producer was approved for CFU for 50 acres to graze but there was 200 acres on the contract, could this person increase his acres or not according to the court agreement?
- A43.** Yes, this modification is acceptable.
- Q44.** If Category C producer went ahead and hayed under managed haying provisions, can they still qualify for CFU?
- A44.** No, when managed haying occurred, the producer effectively withdrew the CFU application.
- Q45.** Some have County Offices schedule producers by appointments. Many of these County Offices scheduled producers who wanted to use CFU after July 8, 2008; is it possible to consider these CRP participants under Category B?
- A45.** No, Category C applies.
- Q46.** Does the purchase of livestock qualified as an investment in preparation of CFU under Category C?
- A46.** Yes, provided expenditures were in reliance on Notice CRP-598.
- Q47.** If a contract holder meets the requirements of Category C and certifies to Notice CRP-606, Exhibit 1 does that mean he can hay/graze anybodies CRP? In other words, if the producer is an eligible Category C person does that free him up to hay all the CRP he can find?
- A47.** No, the participant may not add acreage because his/her reliance was only on the acreage that was then available between May 27, 2008, and July 8, 2008.

CFU Questions and Answers (Continued)

- Q48.** We have producers that purchased equipment to hay CRP between May 27, 2008, and 5:00 pm, p.t., on July 8, 2008. Two purchased balers and 1 purchased a tractor. They all have the sales receipts for the equipment and will certify on the declaration form. Do producers have to prove on the receipts and declaration that the purchase/investment was for CFU?
- A48.** Yes, COC must review for reasonableness the proof of investment and declaration that the expenditures were in reliance on Notice CRP-598.
- Q49.** A father and son purchased a \$7,000 rake. They do their haying together. They each have a CRP contract with some eligible acres. Can they meet the \$4,500 investment requirement?
- A49.** Because they operate as individuals, the \$4,500 level is only reached if they individually met that requirement.
- Q50.** For Category C producers, what is the cut-off date to apply for haying or grazing? Could a producer apply for haying on September 30, 2008, if they met all provisions (modified Conservation Plan, admin. Fee paid, etc.) and if they completed haying activities by September 30, 2008? What is the cut-off date for grazing?
- A50.** The practical cut-off date is the time before the applicable ending date less the time needed to apply, modify the plan, approve the modification, hay or graze, and remove the hay or livestock.
- Q51.** We only maintain a Notice CRP-606, Exhibit 2, register for Category C producers, right?
- A51.** Yes.
- Q52.** If the \$75 fee to enroll is considered an eligible investment?
- A52.** Yes, provided the expenditure was in reliance on Notice CRP-598.
- Q53.** Does purchased livestock count as an investment toward grazing preparation if the producer declares that the livestock was purchased to graze CRP based on a significant reliance on Notice CRP-598?
- A53.** Yes, provided the expenditure was in reliance on Notice CRP-598.
- Q54.** If a producer has more than one CRP contract is she required to show a \$4,500 investment in reliance on Notice CRP-598 on each contract or can she document the \$4,500 investment once and enroll all contracts in which she has an interest?
- A54.** Provided the expenditure was in reliance on Notice CRP-598, the single investment may apply for all contracts.

CFU Questions and Answers (Continued)

- Q55.** Contract participant is in Category A. Livestock were not removed because of feed shortage and contract participant applied for emergency grazing. Does the payment reduction apply? Producer had an approved CFU application but was not sure if they would even have still have 1 with TRO.
- A55.** No, when emergency grazing occurred, the producer effectively withdrew the CFU application.
- Q56.** Regarding Category C expenses for using the contract participant's hay, which is not normally fed during the time of TRO, the participant knows number of bales fed to sustain livestock, but no receipts other than last years cost of production. Does this meet the documentary proof of the \$4,500?
- A56.** The participant should use item 4 of the declaration to describe his/her reliance on Notice CRP-598. COC must review for reasonableness the proof of investment and declaration.

