

July 20, 2004

Easement Division
Natural Resource Conservation Service
P.O. Box 2890
Washington, DC 20013-2890

Re: Grassland Reserve Program

On behalf of its more than 400,000 members, Environmental Defense respectfully submits the following comments on the Grassland Reserve Program (GRP) interim final rule published in the Federal Register on Friday, May 21, 2004.

We believe the interim final rule represents a significant improvement over the Notice of Availability of Program Funds (NOFA) pursuant to which USDA implemented the GRP in fiscal 2003. Environmental Defense had serious concerns about both the NOFA and how the states implemented the program on the ground last year. In particular, we were concerned that many states' ranking systems did not give sufficient weight to biodiversity, despite the fact that the statute made clear biodiversity was to receive the same consideration as support for grazing operations and threat of conversion. Environmental Defense is very pleased to see that the interim final rule addresses this problem and requires states to consider biodiversity equally with threat of conversion and support for grazing operations as they rank applications for enrollment in the program. We applaud USDA for making this important change.

USDA has made a number of other good changes to the program since last year. We have the following suggestions for further improvements:

1. Replace the term "natural" throughout the rule and modify the definition to exclude invasive species.

Environmental Defense strongly supports the priority the interim final rule gives to preserving the nation's remaining native grasslands. We also recognize that some non-native grasslands can support significant biodiversity and that it may be extremely difficult to restore native-dominated grassland in some areas. As described in more detail below, we therefore support a secondary emphasis on enrolling non-native grasslands supporting (or having the potential to support) significant biodiversity.

The use of the term "natural" to describe non-native grasslands that support significant biodiversity is, however, confusing, and the definition itself is problematic. First, the definition uses undefined terms such as "adapted" and "ecological site," and includes "native," which has already been described as distinct. Secondly, and more importantly, the definition of "natural" fails to exclude invasive species. While it does exclude noxious weeds, federal and state noxious weeds lists are limited and do not include many species that are considered invasive.

Suggested modification to rule language: We believe that NRCS’s purposes in allowing enrollments of beneficial non-native grasslands will be better achieved by replacing the term “natural” with “naturalized” throughout the rule and defining that term as follows:

“Naturalized means an introduced species that can perpetuate itself in the environment without cultural treatment. For the purposes of this part the term “naturalized” does not include any plant listed as “invasive or noxious” on USDA’s “PLANTS” database, nor any species that the State Conservationist determines to be invasive or otherwise ecologically destructive.”

2. Emphasize priority for enrollment of native grassland over enrollment of naturalized grassland, and ensure states design ranking systems that achieve this and other program objectives.

As stated above, we are very pleased that the interim final rule addresses the fact that last year, many states gave insufficient emphasis to biodiversity, and we applaud USDA for specifically prioritizing the enrollment of native grasslands. We also agree that some non-native grasslands can have high biological value, and that these should also be given priority. We suggest, however, that given the extent to which native grasslands have disappeared, the difficulty of restoring them, and the fact that native grasslands are nearly always better for plant and animal biodiversity, native grasslands should be given greater priority than non-native.

Suggested modification to rule language: We suggest USDA modify the program purposes at §1415.1 to read as follows:

“(b) The objectives of GRP are to:
(1) Emphasize preservation of native, **and secondarily of naturalized**, grasslands [~~and shrublands~~],¹ first and foremost . . .”

Similarly, §1415.8 should be modified in the same way:

"(b) USDA, at the State level, with advice from the State Technical Committee, shall establish criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.
(c) Ranking criteria will emphasize support for:
(1) Native [~~and natural~~] grassland, **and secondarily for naturalized grassland;**"

In the summary of §1415.8, USDA notes that by prioritizing offers of eligible land for funding, the agency “seeks to secure maximum conservation benefits for the Federal dollar expended,” and the agency seeks comments on this decision. Environmental Defense strongly supports this approach and praises USDA for taking it. In order to ensure states develop ranking criteria that accomplish the intent stated in the rule, however, we suggest the following change to §1415.8(a):

¹ Because “shrubland” is included in the definition of “grassland” at §1415.3, it is unnecessary to use it here or anywhere else in the rule.

“(a) USDA, at the National level, will provide to USDA offices at the State level, [~~broad~~] national [~~guidelines~~] **guidance** for establishing State specific project selection criteria.”

While decisions about state resource concerns and targeting of GRP dollars within the state should be left to USDA’s state offices, with advice from state technical committees, and sufficient flexibility allowed for innovative approaches, we believe it is more effective and efficient for USDA to develop guidance at the national level on how to design effective ranking criteria to achieve program objectives. Providing more detailed guidance on how to develop ranking criteria would allow states to make whatever modifications are needed to focus on specific state resource concerns, but would save states the trouble of developing their own ranking criteria and ranking sheets from scratch.

Environmental Defense strongly supports USDA’s decision, reflected in §1415.8(e), to allow states to use one or more ranking pools, including pools for special project considerations such as projects that will leverage funding from other sources. We also support the approach described in the summary of this section, in which projects in each ranking pool will only compete with similar projects, not with projects in other ranking pools. We suggest that this approach be described in the guidance provided to the states on ranking systems.

We also praise USDA for giving states the flexibility, in §1415.8(f), to emphasize the enrollment of unique grasslands or specific geographic areas of the state.

3. If funds are to be allocated to states, there should be strong national guidance and oversight to ensure program objectives are being achieved.

As stated above, we believe it is important to provide the states with guidance on how to design effective ranking systems. As USDA notes in the discussion section of the interim final rule, the disadvantage of allocating funding to states is that it results in differences between state ranking criteria and may make it more difficult to address specific national priorities. Strong national guidance to states on how to design ranking criteria, while allowing states the flexibility to focus on specific state resource concerns and/or target GRP funding to specific areas of the state, should ensure that any differences between state ranking criteria are simply a result of different priorities in different states. Obviously, we wish to avoid a situation in which some states are doing a good job of implementing the program consistent with the interim final rule and all program objectives, while other states are not.

4. Allocation formula and process should be transparent and should be designed to ensure program objectives and national priorities are being achieved.

USDA specifically asks for input on criteria and weighting factors to be used in allocating funds to states, and the national guidance from which States develop their individual ranking criteria. Again, Environmental Defense believes it is critical to have strong national guidance on how to design effective ranking criteria. This guidance could include some kind of ranking template, or at least examples, which states could modify to address state-specific issues and priorities, consistent of course with the program objectives set out in the interim final rule. This guidance should also provide clear instructions to states on how to measure accurately all different kinds

of conversion threats (see below) and how to measure accurately the biological value of lands offered for enrollment. Multiple measures of the biological value of offered parcels should be used, such as: the degree to which the offered parcel is comprised of native vegetation or rare plant communities; the extent to which it is contiguous with other primarily native parcels of grassland; the degree to which the offered parcel provides habitat for listed, candidate, or rare species of wildlife; the offered parcel's proximity to other protected native parcels under conservation management; the degree to which the offered parcel is free from invasive species; the extent to which the offered parcel includes other imbedded biologically significant habitats, like playa lakes, prairie potholes, or prairie dog colonies; and the willingness of the owner or operator of the offered parcel to manage the land in a manner that will protect and enhance the offered parcel's biological value.

Good national guidance will not only ensure the program achieves its goals, but will also save states time and effort.

In terms of criteria and weighting factors to be used in the allocation process, we believe it is important that the process be transparent and sufficiently straightforward so as not to appear arbitrary. We support USDA's decision to use the program objectives – support for grazing operations, plant and animal biodiversity and grassland under the greatest threat of conversion – in allocating funding to the states.

We appreciate USDA's request for comment on credible data that is national in scope related to grassland plant and animal biodiversity. We recommend USDA work with NatureServe (www.natureserve.org), a non-profit conservation organization that collects and maintains scientific data gathered from its network of natural heritage programs, conservation data centers and other biological inventories operating in all 50 states. NatureServe is considered a leading source for information about rare and endangered species and threatened ecosystems. Other government agencies have used NatureServe, including the U.S. Geological Survey, which is partnering with NatureServe on a project to improve online access to data and information about the biological resources of the United States.

Environmental Defense has some concerns about elevating demand for program dollars in a state to the same level as the program objectives for purposes of making allocations to states. On the one hand, states where landowner interest in participation is very high should receive some consideration for this high demand; on the other hand, this demand factor should not trump program objectives. We are concerned that if a state receives many applications, but the vast majority would not rank very high, giving this state more program dollars the following year in response to this demand could result in enrolling more acres in that state of lesser conservation value, while in another state, applications that might rank higher will go unfunded. The demand factor also does not take into account what type of enrollment option is most popular in the state, so a state in which the vast majority of landowners are only interested in short-term rental agreements could receive more funds than states that have tried to prioritize longer-term agreements and have received more of those applications as a result of better outreach efforts. We are afraid that the overall result of including a demand factor weighted equally with program objectives will be that landowners and the public receive fewer conservation benefits for the public money expended.

Also, we suggest that USDA consider another factor in allocating funding to states – how well the state is implementing the interim final rule and following national guidance on ranking applications for funding. Including this factor would alleviate some of our concerns with the demand factor, in that it would help ensure that a state that is not doing a good job of implementing GRP to achieve program objectives, but has a huge demand for dollars, will not receive an increase in its allocation at the expense of other states that are giving equal weight to the three program considerations and prioritizing the enrollment of native grasslands.

5. The rule should include specific provisions making clear that states are to consider many different types of conversion threats.

Environmental Defense agrees with USDA’s statement in the summary of §1415.1 that the Farm and Ranch Lands Protection Program (FRPP) is better-designed than GRP to protect land subject to urban conversion threats. We are pleased that USDA makes clear in the summary that conversion threats to grassland come in various forms, and that states should use GRP to address conversion threats other than urban conversion, such as conversion to cropland or invasion of woody or other ecologically destructive species. We suggest, however, that in order to ensure states do this, the rule language, in addition to the rule summary, should include provisions further defining “threat of conversion.” We also believe USDA should address this issue in the national guidance it makes available to the states.

Suggested modification to rule language: We suggest modifying §1415.8(c) as follows:

“(c) Ranking criteria will emphasize support for:

(2) Protection of grassland from the threat of conversion, **with an emphasis on non-urban conversion threats, including conversion to cropland, to woody or other invasive species, oil and gas development, and aggregate extraction.**”

6. Conservation plans should require program participants to maintain viability of grassland, and ranking criteria should give strong preference to applications offering to improve grassland functions and values.

Environmental Defense strongly supports USDA’s decision to require program participants to follow a conservation plan that maintains the viability of the grassland regardless of the grassland use. While we also support giving states flexibility in determining what a GRP conservation plan should include, we feel it makes sense to provide guidance to the states on certain minimum requirements all conservation plans must meet.

USDA asked for input on the specific issue of whether a participant should be able to maintain the current cover even if it contains a monoculture of a less desirable species, or whether a participant should be required to manage the property to move toward a certain natural resource condition. We believe that asking participants the condition of enrolled grasslands – through interseeding with native species, for example – makes sense. Given the demand for program dollars, however, we believe that effective state ranking criteria may obviate the need for

imposing a requirement to do so. That is, if states design their ranking systems consistent with the requirements of this rule, a landowner wishing to enroll lands of low biological value and maintain current conditions should not score well relative to offers that promise to improve conditions and increase biological value.

Unfortunately, many state ranking systems do not currently require an assessment of future grassland conditions, only current conditions. States are therefore not giving additional points for the level of improvement in grassland functions and values anticipated from funding applications. We suggest that USDA, in its guidance to states, encourage them to include in ranking systems points for level of improvement.

7. USDA should consider requiring that native seed appropriate to the locale be used by participants in a restoration agreement.

While we are pleased that in the final rule, USDA has tried to create a strong preference for native seed when reseeded is required as part of a restoration agreement, we believe the agency should consider going further and requiring native seed when cost-share is provided for reseeded or interseeded as part of a restoration agreement. While we understand that restoring grasslands to their native condition can be cost-prohibitive and in some cases may be impracticable, and that naturalized grassland can provide significant biodiversity benefits, we believe that when a program participant is receiving cost-share for what we are calling “restoration,” it is fair to require restoration to a native condition. If USDA is unwilling to require this, it should consider allowing states the option to do so, with the advice of state technical committees.

Suggested modification to rule language: Section 1415.11(d) is confusing. Does the statement “restoration activities are applicable to native and natural plant communities” mean that only native or “natural” grasslands are eligible for restoration agreements, or that if one is engaged in restoration, one must restore grasslands to a native or “natural” condition? If the latter, we suggest the following changes:

“(d) [~~Restoration activities are applicable to native and natural plant communities.~~] When seeding is determined necessary for restoration, USDA [~~will give priority to using~~] **shall require the use of native seed appropriate to the locale.**

8. USDA should allow states to waive the 40 acre minimum parcel size, and/or to give significantly greater weight, through ranking systems, to much larger tracts, as needed to meet state resource priorities.

Environmental Defense supports USDA’s decision to allow states to waive the 40 acre minimum parcel size if it is consistent with program purposes. We also support USDA’s decision to give states the flexibility to create separate funding pools according to size of offers, geographic area or specific resource concerns to be addressed. This would allow a state to dedicate a certain amount of its GRP dollars to preserving small prairie remnants, for example. In addition, we support giving states the flexibility to give significantly greater weight, through ranking systems,

to much larger offers where it may be more important to protect very large tracts than to protect smaller tracts.

9. USDA should reconsider its definition of “grazing value.”

Environmental Defense has learned that USDA’s definition of “grazing value” as “grassland value” can have a major negative impact on the appraisal value and discourage easements. This interpretation of grazing value in the development of the rule changes the intent of the statute and ultimately results in lost easements where rural land values are greatly raised by recreational value.

The statute refers only to grazing value, but the interim final rule defines “grazing value” as “the value assigned to the grassland cover by USDA.” This is causing a problem in some states. For example, in Wisconsin, the value assigned to grassland includes certain retained rights, such as recreational use, in addition to grazing value. The value of recreational use is so high that landowners are offered little for permanent easements – in fact, in at least a few cases, the valuation method resulted in landowners being told that they owed money to USDA in order for placing an easement on their property. Clearly, this is a problem that must be addressed.

Thank you for the opportunity to comment on the interim final rule for the GRP, and for your consideration of our comments. If you have questions, please contact:

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