

654

LANDOWNERS ASSOCIATION OF NORTH DAKOTA

P. O. Box 38, Bismarck, ND 58502-0038 Phone/Fax: 701-667-4185

Home Page: www.ndland.org

Email: landowner@starband.net

March 1, 2004

Mr. David McKay
Operations Division, NRCS
PO Box 2890
Washington DC 20013

RE: CSP Comments

Dear Mr. McKay:

On behalf of the Landowners Association of North Dakota (LAND), I'm writing to comment on proposed rules for the Conservation Security Program.

First, LAND applauds NRCS for limiting contracts to ten years, with annual payments. We believe that short-term contracts with annual payments are the best way to have a good working relationship between any contractor and landowner. We ask you resist an attempt to move participating landowners from short-term contracts into longer term easements....or require participation in a longer-term easement program in order to qualify for CSP.

We believe that **no adjacent landowner should be affected by a CSP contract.** Furthermore, we believe that, if adjacent landowners are adversely affected, it should be the responsibility of NRCS to fix the problem and make restitution to the landowner.

Once the CSP contract ends, operators should NOT be required to maintain practices for their lifespan. How can you require such maintenance when you no longer have a relationship with the landowner? What if the land changes hands? How will potential future landowners be aware of such provisions, if the stipulation is not attached to a deed? Moreover, what is the REAL lifespan of a fence, tree, etc.? Extreme weather conditions in our state often contribute to the early demise of shelterbelts, terraces, etc. How can the current (or future) landowner be held liable for such conditions? **LAND strongly believes that CSP contract provisions should NOT continue past the actual contract.**

If a landowner with a CSP contract buys or purchases additional land not under contract, that landowner should NOT be penalized, NOR REQUIRED to put the new land under CSP. It may not be reasonable for the landowner to include such property in CSP.

LAND is extremely concerned with how NRCS plans to handle land under CSP contract where control of the property changes hands. If the operator/operator dies, is injured and unable to manage the property, or sells or loses the land for financial reasons, etc., how can that person (or his successor's) be required to maintain or complete a contract? How can future owners be required to complete the contract? **We urge NRCS to maintain flexibility in contracts.**

LAND believes that participants should have the option of going to court over ANY DISPUTE! They should not be forced into the administrative rule process and ALL DISPUTES should be able to be settled in court. On a practical side, we recognize that most disputes are not severe enough to require a court settlement, but landowners should not have to give up any rights in order to sign a CSP contract.

Sincerely,



LeAnn M. Harner
Executive Director

DEDICATED

To the preservation of the revenue generating activities of our farmers and ranchers along with their most valuable, renewable resource - Land.

738



Family Farm Defenders

P.O. Box 1772, Madison, WI 53701 Fax./Tel. #608-260-0900

March 1, 2004

Dear Mr. McKay,

On behalf of Family Farm Defenders, a national grassroots organization based in Madison, WI, I wish to submit several comments about the USDA's proposed rules for the Conservation Security Program (CSP).

Our group strongly supports the CSP and is alarmed that proposed federal funding levels will not provide adequate incentives to family farmers who deserve public help in their effort to conserve our natural resources and be responsible land stewards. Funding should not be restricted based upon watersheds or other arbitrary agricultural categories.

The USDA should also not penalize farmers for having a more diversified production system, such as managed intensive rotational grazing (MIRG) and soil conserving crop rotations. Payments pegged to base acreage of certain commodity crops like corn and soybeans are no longer appropriate. Pastureland under MIRG should receive consideration and compensation comparable to cropland, and CSP should utilize NRCS land capability classes to set payment rates - not just current land use. The USDA should also allow farmers certified under the National Organic Program (NOP) to simultaneously qualify for CSP so as to minimize the paperwork involved and save taxpayers money.

Lastly, USDA should provide real payments to responsible farmers through the CSP program and not just token cost share funds. In order to avoid potential fraud, the USDA should rely on a one farmer-one contract approach and limit CSP payments to real people and not recognize other business/corporate entities. The bulk of CSP money should also be devoted to renewable contracts for those who are already providing environmental benefits through demonstrated conservation practices and not be used to subsidize one-shot experimental techniques.

Thank you for the opportunity to comment on this important program and our members look forward to participating in a fully funded CSP with equitable standards that benefit all farmers - not just a privileged few.

Sincerely,

John E. Peck
Executive Director

Committed to making
God's love visible.

739

VINCENTIAN
SISTERS
OF
CHARITY

March 2, 2004

Conservation Security Program Comments
ATTN: David McKay
NRCS Conservation Operations Division
P.O. Box 2890
Washington, DC 20013

I am writing to suggest important changes to the USDA's proposed rules for the operation of the Conservation Security Program (CSP). I support the CSP as a nationwide conservation program focused on working farmlands and which would "reward the best, and motivate the rest." As intended by Congress, the CSP should be open to all farmers in the United States practicing effective conservation.

I strongly suggest that USDA should issue a supplement to the rule, open for public comment for 30 days. We need this done immediately to fix major problems with the proposed rules issued on January 2, 2004. They are not consistent with the law authorizing the CSP or with the funding allocated by Congress making CSP an uncapped national entitlement program.

In addition,

1. USDA's "preferred approach" in the proposed rule would severely and unnecessarily prevent most farmers from gaining access to the CSP. USDA must adhere to the law, and to the recently appropriated full funding of CSP by Congress, and make CSP available nationwide to all farmers practicing effective conservation. The USDA needs to end thinking of restricting sign-up for CSP to a few "selected Watersheds" and undefined "categories."

The USDA's proposed rules fail to make adequate payments for environmental benefits being produced by farmers currently practicing effective conservation. The best way to secure the vital conservation of our soil and other resources is to recognize and reward it when and where it is being done. Paying the best practitioners for results is sound economics and smart policy, providing both reward and motivation.

To: Conservation Security Program Comments

Date: March 2, 2004

Page 2

CSP base payments should be set at the local rental rates based on land capability without the 90% reduction by USDA. Enhanced payments should reward the most environmentally-beneficial systems and to the maximum extent possible pay for results. The enhanced payments should not be treated as cost-share but rather as real bonuses to reward exceptional performance.

2. CSP needs to recognize and reward resource-conserving crop rotation and managed rotational grazing as proven conservation farming systems that deliver environmental benefits to society. Both are specifically mentioned for enhanced payments in the CSP statute. The final rule should highlight substantial enhancement payments for these systems, as well as payments for management of existing practices.

3. CSP should allow farmers with USDA-approved organic certification plans under both the National Organic Program and CSP, if they meet the standards of both. No need to tie farmers up in red tape.

4. NRCS should utilize the one-producer, one-contract approach to CSP contracts, as a way to provide the fairest treatment of all producers and to guard against program fraud and abuse. All CSP payments should be attributed to real persons (not various corporate or business entities). Payment limits set in the law (\$20,000 per year for Tier 1, \$35,000 per year for Tier 2, and \$45,000 per year for Tier 3) must be maintained.

5. CSP contracts should be renewable, as part of an ongoing program. NRCS' proposal that CSP contracts in general not be renewable, except in special circumstances, conflicts with the law, which leaves it up to the farmer to decide if he or she wants to renew the contract, which USDA would renew unless the farmer was not fulfilling the contract. NRCS' proposed restriction to one-time contracts is contrary to the entire purpose of the CSP to secure ongoing conservation of our nation's national resources.

Signed:



Sister Christine Rody, VSC
Bedford, Ohio



WYOMING FARM BUREAU FEDERATION

P.O. Box 1348
Laramie, Wyoming 82073 • (307) 745-4835

661

March 1, 2004

Conservation Operation Division
Natural Resources Conservation Service
P.O. Box 2890
Washington D.C. 20013-2890
e-mail david.mckay@usda.gov

Attention: Conservation Security Program

Dear Mr. McKay:

The Wyoming Farm Bureau Federation appreciates the opportunity to comment on the proposed regulations implementing the Conservation Security Program (CSP). The American Farm Bureau Federation has been a strong advocate for the CSP and we agree with them, that with changes, CSP can become an efficient and effective program for assisting producers with environmental compliance.

We would like to add our support to the comments made by the American Farm Bureau Federation, and included here. We would like to stress that program flexibility and the encouragement of innovative and creative solutions must be available to participants. Allowing ourselves to explore options in resource use conservation, and even allowing ourselves the (heaven forbid) occasional miscalculation will only add to our knowledge base regarding the management of our natural resources. Please take care that locally important resource concerns are also eligible for this program; if our local concerns go unaddressed, it is hard to see how we are going to get too worked up about national concerns. We do have interest in this program in Wyoming; just not a lot of faith that it will be something our landowners actually get to participate in, and benefit from.

CSP establishes a policy framework that provides incentives for the nation's environmental goals and objectives and moves the federal government beyond traditional regulatory approaches embedded in so many of our environmental statutes. This program can work to enhance both the nation's agricultural productivity and environmental resources. CSP also provides USDA a unique opportunity to establish policies that benefit the environment and help ensure that agricultural producers receive assistance to defray the cost of environmental regulation.

Enactment of the 2004 Consolidated Appropriations Bill restores the CSP from fiscal 2005 forward to a full nationwide program as enacted in the 2002 farm bill. We believe the Final Rule should reflect the current mandatory status of the program and include extensive revision to the budget driven application, implementation and eligibility requirements. USDA's analysis shows a fully implemented CSP would provide an overall public benefit of \$62 billion above costs over a 10-year period. Most of these benefits would be lost under the proposed rule because it is overly complex, restricts eligibility and drastically reduces incentives when compared to what was authorized in the 2002 farm bill.

Overall, our analysis is that the proposed rule is too complicated, restrictive and provides too little financial incentive for many farmers and ranchers to participate. We encourage NRCS to change this before the regulation is finalized. We recommend that NRCS address the programs overall lack of clarity by finalizing a regulation that is easy to understand and which fosters participation. NRCS can greatly simplify implementation of this program by establishing a "list" of approved conservation practices and intensive management activities eligible for CSP payments and make payments based on a participant's willingness to implement the identified measures. Participants will then be able to understand the practices and management activities CSP seeks to implement the incentive payments for developing, incorporating and maintaining such practices. This approach would provide a clear road map for individuals wishing to receive conservation and environmental incentives in exchange for implementing and maintaining identified conservation practices and management activities.

This approach also provides financial incentives in exchange for environmental performance and fulfills the statutory requirements contained in the Farm Security and Rural Investment Act of 2002.

With regard to the proposal published in the January 2, 2004 Federal Register, we encourage NRCS to significantly revise its proposal and consider the following specific comments regarding :

Section 1469.3 Definitions:

Agricultural operations – The regulation attempts to define a "cohesive management unit" too broadly. We suggest that USDA define participation units as contiguous acres that are part of an agricultural operation. Application of conservation practices and enhancement requirements on an entire farming and ranching operation will significantly restrict the programs applicability for many commercial sized operations. We suggest NRCS maintain consistency with other farm programs and allow participants the flexibility of separate CSP contracts by Farm Service Agency farm numbers.

At-risk-species – We oppose the inclusion of any reference to "at-risk species" in these rules. There is no statutory category for "at-risk species" within the authorizing legislation, and neither the NRCS nor the state technical committees have the expertise to name "at-risk species." Endangered and threatened species are the responsibilities of the Department of the Interior through the Endangered Species Act, and any attempt by NRCS or state technical committees to name their own at-risk species would be contradictory and confusing. CSP is designed as a voluntary enhancement program to assist producers willing to address natural resource issues on their property. Species protection is an indirect benefit of the program, not a primary regulatory component. If NRCS wishes to have a category for imperiled species, we suggest that it use accepted categories of endangered or threatened species as defined in the Endangered Species Act, instead of creating its own duplicative categorization.

Conservation practice – The proposed definition limits all treatments, structures, and land management practices to strict NRCS standards. Although we are supportive of NRCS's standards, we believe the statute was also written to encourage new technologies and innovative

conservation practices beyond those included in NRCS's handbooks and guides. The regulation should be modified to allow conditional approval of conservation practices not yet included in NRCS's standards.

Nationally significant resource concerns – CSP allows farmers and ranchers the opportunity to address any natural resource – air, water, soil, energy and wildlife – on their operation. Nationally significant resource concerns may or may not apply to individual agricultural operations and could significantly limit the program's applicability to individual agricultural operations. This is a program that was designed to apply to all agricultural operations and NRCS should remove subjective designations that restrict implementation of this program on any farm wishing to participate.

Section 1469.4 Significant Resource Concerns – The statute plainly directs the Secretary to *establish a conservation program that promotes conservation and improvement of the quality of soil, water, air, energy, plant and animal life and any other conservation purpose broadly determined to benefit the environment.* In general, we believe this language directs NRCS to provide individual producers the flexibility to address all of the resource concerns identified within the statute and tailor their participation to resource concerns important to their operations' goals and objectives. NRCS should refrain from narrowing the scope of this program.

Section 1469.5 Eligibility requirements and selection and funding of priority watersheds – This section is of particular concern because, as written, it excludes a large number of farmers and ranchers from ever having the opportunity to participate in this program. Furthermore, this section contains so many discouragements that many others may not even try to participate. We encourage USDA to listen to the many criticisms directed at this section during the USDA listening sessions and revise the eligibility requirement so that most farmers and ranchers are eligible to participate.

Section 1469.5(a)(3) – Requires the participant to have control of the land for the life of the proposed contract. This provision is unworkable and unnecessary, and Farm Bureau strongly suggest NRCS drop this proposal altogether.

Section 1469.5(a)(3) iii – Significantly limits participation of an applicant that cannot "show control" of the entire operation for the life of the contract. This section directs that a participant would not qualify for any payments on a "non-participating parcel" but the parcel would still be considered as part of the contract and the participant would be required to maintain the same conservation standards on the non-participating parcel as on the balance of the participating operation. This requirement is a significant disincentive and should be eliminated.

Section 1469.5(a)(4)i – This provision requires that any individual wishing to participate must address all nationally significant resource concerns, Water Quality and Soil Quality, before they become eligible to participate in CSP. We believe this requirement violates the basic intent of an incentive program designed to both encourage maintenance of existing practices AND promote the adoption of new practices. We encourage NRCS to revise the participation requirements to allow individuals wishing to adopt new practices or a higher "tier" to be eligible for incentives prior to participation. The statute was directed to individuals wishing to implement new

conservation practices and to participants already maintaining conservation practices. Farm Bureau encourages NRCS to broaden the CSP proposal and encourage participants to adopt new and enhanced conservation practices, not just reward eligibility to those already internalizing the cost of NRCS standards.

Section 1469.5(a)(4)ii and iii – These sections requires that participants address water quality and soil quality before a participant can broaden their conservation efforts to other resource concerns. We believe this approach is too restrictive, too narrowly focused and unnecessarily limits resource concerns. We suggest that NRCS broaden the eligibility process to allow farmers and ranchers the opportunity to develop and enhance innovative conservation approaches that might address any of the resource concerns identified by the statute.

Section 1469.5(a)(8) – This provision appears to indicate that additional eligibility criteria and contract requirements may be “included” at CSP signup. This proposal is already burdened with too many eligibility requirements. Farm Bureau questions the rationale for proposing additional eligibility requirements without adequate public notice and comment and suggests that NRCS eliminate this section.

Section 1469.5(e) – NRCS proposes to select and fund “priority” watersheds. They also indicate that they will request public comment (*Section 1469.5(e)(3)*) on the process used to select “priority” watersheds before the signup announcement. The statute did not single out any specific priority ranking system or envision limiting this program to NRCS “selected” watersheds.

Section 1469.6 Enrollment Categories – The establishment of enrollment categories and sub-categories appears to set up a ranking system that is overly complicated and confusing. We encourage NRCS to make this program broadly available to producers who meet the standards of participation.

Section 1469.7(2)(vii) Benchmark conditions – This section requires that the conservation security plan include an evaluation component that would “enable evaluation of the effectiveness of the plan in achieving its environmental objectives.” Farm Bureau is supportive of an effective evaluation process and encourages NRCS to provide more information and details as to what may ultimately be required. We are specifically interested in the cost that might be associated with such a monitoring requirement. We also encourage NRCS to clarify this requirement and provide specific details on what will be expected of participating individuals.

Section 1469.8(a) Conservation Practices – This section indicates that NRCS will establish a “list” of approved conservation practices and intensive management activities eligible for CSP payments. We think this is an excellent approach and will expedite the successful implementation of this program on a national basis. This approach should be the primary operational mechanism for CSP implementation because it provides a clear indication to individuals wishing to participate and what practices are eligible for incentive payments. *Section 1469.8(e)* - We encourage NRCS to use broad discretion when considering and approving new technologies or conservation practices. NRCS should encourage innovation by approving

interim conservation standards and financial assistance for pioneering technology or cutting-edge conservation practices.

Section 1469.9 – Technical Assistance – Farm Bureau supports the use of NRCS-approved or certified Technical Service Providers in the performance of its responsibilities in carrying out this program.

Section 1469.20 – Application for contracts and their selection – Farm Bureau encourages NRCS to significantly streamline this section. This section establishes one hurdle after another and will preclude scores of agricultural operations from participating. We recommend NRCS establish a basic contract for implementation of various levels of environmental performance and allow individual operations the flexibility to make application to the level of their choosing.

Section 1469.21 – Contract Requirements – Farm Bureau believes this is the most flawed section of the proposed regulation. Specifically, this section creates many artificial participation restrictions not authorized by the statute. We encourage NRCS to eliminate the following restrictions from its proposal: 1) a participant can have only one CSP contract per agricultural operation; 2) the 18-month waiting period requirement for a participant to advance to a higher “tier,” and 3) the requirement to refund all CSP payment received on the transfer of the right and interest of the owner or operator in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligation of the contract. We encourage NRCS to keep the operational approach to this program as simple as a three-step process - a clear road map for individuals wishing to increase their environmental performance in exchange for implementing and maintaining clearly identified conservation practices and management activities.

Section 1469.21(d) Conservation Security Contracts – These requirements are excessive and appear to be necessitated by an overly complex program. We view this section as redundant with the requirements of *Section 1469.22 - Conservation practice operation and maintenance* and therefore recommend that NRCS simplify the proposal by eliminating this specific subsection in light of 1469.22.

Section 1469.23 – Program Payments – The statute clearly directs the Secretary to establish a base payment. Specifically it requires the Secretary to determine “the average national per-acre rental rate for specific land use during the 2001 crop year or another appropriate rate for the 2001 crop year that ensures regional equity.” Congress made very clear that it intended for the base stewardship payment to be based on rental rates and the Statement of Managers specifically emphasized that “*the Secretary shall not provide a rate lower than the national average rental rate.*” We recommend NRCS revise the payment schedule included in the proposal to comply with the direction of Congress.

In conclusion, Farm Bureau appreciates the opportunity to provide comment and recommendation on the proposed rule. Our members are encouraged by the opportunity to implement a new voluntary, incentive-based conservation program that provides financial and technical assistance. The Conservation Security Program provides many opportunities for farmers and ranchers and the public to work together to implement conservation practices on working agricultural lands. We believe the proposed program needs to be improved and

implemented in a manner that identifies and rewards farmers and ranchers who strive to achieve the very highest standards of conservation and environmental management on their operations. We believe the CSP can create a new dynamic in conservation funding where incentives encourage farmers and ranchers to reach new and improved conservation standards and also reward ongoing conservation efforts.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzy Noecker".

Suzy Noecker
Information Director