

# Facsimile Transmittal

Center for Rural Affairs

NEW ADDRESS  
145 Main Street  
PO Box 136  
Lyons NE 68038  
(402)687-2100  
Fax (402)687-2200



VALUES. WORTH. ACTION.

Date: 3-2-04

Fax Number: (202) 720-4265

Attention: David McKay

From: Traci Bruckner

Number of pages (including this cover): 10

Comment(s):

*Comments for the CSP Proposed rule*

Reply requested: Yes No

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Reply requested: Yes No

**CENTER *for*  
RURAL AFFAIRS**

VALUE WORTH ACTION

**BY ELECTRONIC MAIL**

March 2, 2004  
David McKay  
Conservation Operations  
NRCS PO Box 2890  
Washington, DC 20013-2890  
Attn: CSP

**RE: Proposed rule on Conservation Security Program, published January 2, 2004,  
Volume 69 of the Federal Register at page 194.**

Dear Mr. McKay:

This letter constitutes the Center for Rural Affairs comment's on the proposed rule for the Conservation Security Program as published in the Federal Register by the Natural Resource Conservation Service (NRCS) on January 2, 2004.

The Center for Rural Affairs is a private, non-profit organization incorporated under the laws of the State of Nebraska. The Center for Rural Affairs is located in Lyons, Nebraska, a farm trade and service center in northeast Nebraska with a population just under 1000. Founded in 1973, the Center for Rural Affairs is committed to building rural communities that stand for social justice, economic opportunity, and environmental stewardship. We encourage people to accept both personal and social responsibility for creating such communities. We provide opportunities for people to participate in decisions that shape the quality of their lives and the futures of their communities. The Center engages in research, education, advocacy, and service work to further this vision of rural America.

Our comments below include:

- I. An overview of what we believe are the biggest problems associated with the proposed rule and
- II. Specific recommendations for changes to the proposed rule.

**I. Overview of the Problems with the proposed rule**

The Conservation Security Program is the best new and innovative program contained within the 2002 Farm Bill. The CSP is a critical new component of U.S. farm policy and

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**I. Overview of the Problems with the proposed rule**

The Conservation Security Program is the best new and innovative program contained within the 2002 Farm Bill. The CSP is a critical new component of U.S. farm policy and

we urge you to ensure that the program fulfills its promise. However, we believe the proposed rule fails to deliver a program that clearly reflects the intent of Congress.

The proposed rule was drafted based on the assumption that the CSP will be a capped program. Yes, there are funding restrictions for the current fiscal year. But the cap is lifted for Fiscal Year 2005 and beyond. Therefore, it is the duty of the USDA and NRCS to write a program that follows the law as written. It is not the duty of the USDA and NRCS to recreate laws through the rulemaking process.

*In that context, we believe it would be more effective if the \$41 million appropriated for 2004 was divided amongst the states to develop demonstration CSP contracts during the remainder of this fiscal year. In focusing on Fiscal Year 2005 and beyond, we request that USDA/NRCS immediately issue a revised rule that reflects the letter of the law and provides for a nationwide, uncapped, full-scale program available to all farmers and ranchers across the country and provides real financial incentives for conservation farming systems.*

The areas of the proposed rule that we find most problematic and believe must be changed include:

- A) Limiting to priority watersheds
- B) Developing Categories and Subcategories which are equal to creating a ranking system
- C) Eligibility requirements are set too high
- D) Payment structures are set far too low to make the program meaningful for farmers and ranchers.

Each of these will be addressed under the appropriate section of the proposed rule as these comments will now address our recommendations for specific changes to the proposed rule.

## **II. Specific Recommendations for Changes to the Proposed Rule**

### **Section 1469.2 Administration.**

c) In order to provide for clear and concise language, and to reflect the reality that we are dealing with multi-year contracts and that from Fiscal Year 05 and beyond we have an uncapped program, this section should be changed to read as follows: "Contract obligations for the current year of all contracts will not exceed the funding available to the Agency for that year."

d) This should read that the State Conservationist "WILL" or "SHALL" obtain the advice of the state technical committee, not "may" obtain the advise of the state technical committee.

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**Section 1469.3 Definitions:**

**Agricultural land** – We strongly urge that you include grassland, prairie land, and improved pasture land in this definition as the law does specifically call for their inclusion.

**Agriculture Operation** – In an effort to ensure that we do not see multiple contracts established as a means to evade the payment limitation clearly mandated through the law, we oppose the use of the wording “cohesive management unit”. We urge you to strike that language and rewrite the following portion of this definition as such “...under the control of the participant where the participant provides active personal management of the operation on the date of enrollment.”

**Conservation Security Plan** – The whole concept of the Conservation Security Program is conservation planning. The plan will provide the initial inventory and the step-by-step process of further conservation activities to undertake. Therefore, we urge you to strike the following “once the application is selected.” Planning should be part of the enrollment process.

**Enrollment categories** – The establishment of categories as a matter of determining eligibility is not consistent with the law with or without capped funding and appears to be a back door entry for ranking. Therefore, we urge you to strike this language in its entirety.

**Land management practices** – The law specifically lists resource conserving crop rotations as a land management practice. Thus, we are calling for that to be included amongst the list of examples. Also, for clarification purposes, we would urge that the “grazing management” example be changed to read as “managed rotational grazing” as it is referred to in the law.

**Local work group** – Non-governmental organizations and farmers and ranchers should be included within the local work group framework. This addition would help build on the reality of locally driven conservation.

**Resource-conserving crop rotation** – For specificity purposes it would be good to include examples of effective crop rotations that will achieve the requirements established in this definition. Therefore, add the following rotation example: 1 high residue spring planted crop, 1 small grain and 1 biennial/perennial legume.

**Subpart A – General Provisions****Subsection 1469.4 Significant Resource Concerns:**

Again, to enable locally lead conservation to become a reality and for the rule to more closely reflect Congressional intent, there must be some discretion at the state and local levels. We urge you to add the following: “d) State Conservationist, in consultation with

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the State Technical Committee, and with the approval of the Chief, may include up to three additional resource concerns from which the qualifying farmer/rancher may choose which one is most applicable to their agricultural operation under a conservation security contract.”

**Subsection 1469.5 Eligibility Requirements and selection and funding of priority watersheds:**

- 1469.5 (a)
  - (a)(3)(ii) It is unclear as to what written form between landowner and tenant would be required. In my experience as a farmer who is operating under a landowner/tenant relationship, I would expect that something as simple as letter indicating the viability of landowner/tenant relationship would suffice. Multi-year leases are not that common and therefore we would discourage such a strict requirement. But the expectation that relationships are built between landowner and tenant are common and often do lead to the tenant having control of the land for many years.
  - (a)(3)(iii) The CSP contract is longer than a one-year contract. However, there should be ample room for modifications being the payment stream is on an annual basis rather than up front in one lump sum. Thus, if a tenant was to lose control of a portion of land that were under his/her CSP contract, the contract could simply be adjusted to reflect that and the payments for that portion would cease. We also request that the following sentence be deleted: “However, the land is considered part of the contract and is required to be maintained at the same conservation standard of the rest of the operation.”
  - (a)(4)(i) The law clearly states those with a CSP contract should solve resource concerns *as a result* of their participation in the CSP *not prior to* their participation. Thus, please delete this provision from this paragraph in its entirety and instead call for the conservation plan to address how the farmer/rancher will solve resource concerns by the end of the third year of a CSP contract.
  - (a)(4)(ii) Same recommendation as listed under (a)(4)(i)
  - (a)(4)(iii) Same recommendation as listed under (a)(4)(i)
  - (a)(7) The proposed rule should eliminate any all references to sign-up announcements as well as eligibility requirements announced at time of sign-up. CSP should operate under a continuous sign-up period and all information regarding how the program will operate should be available within the proposed rule rather than during different sign-up announcements. Therefore, please strike this language in its entirety.
  - (a)(8) Same recommendation as provided above in (a)(7) – strike this in its entirety.
  
- 1469.5(d) – We support the idea that CSP is not to reward those activities such as sod busting and are pleased to see this included in the proposed rule.

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- **1469.5(e) Selection and funding of priority watersheds – Strike every last word.** The CSP is full-scale, nationwide program with full-funding entitlement status and must be available to all qualifying farmers and ranchers. To suggest this program will only be offered on a priority watershed basis is to evade the clear mandate established within the law passed by Congress and signed by President Bush.

#### **Subsection 1469.6 Enrollment categories:**

This entire subsection should be deleted as the law does not provide for any mechanism that creates or even reflects a ranking process. This subsection would establish such a mechanism and therefore it does not follow Congressional intent or the letter of the law.

#### **Subsection 1469.8 Conservation practices:**

- **(a) Conservation practice selection**
  - (a)(1) For a conservation plan, the basis of the CSP contract, to be innovative and effective, the farmer/rancher must have more than a very short list of practices in which to choose from and receive financial reward. Therefore, remove all of this language and allow for all practices listed in the FOTG in the farmer/ranchers respective state be made available for them to use to solve their resource concern issues.
  - (a)(2), (i) and (ii) Delete these three and replace with the following: “State conservationist, in consultation with the State Technical Committee and the local work groups, will develop a list of activities to be eligible for an enhanced payment.”
  - (a)(3) Again remove any language that refers to a “national list of eligible conservation practices” and instead focus on the entire FOTG for each resource concern in each respective state.
  - (a)(4) Same as just above, replace the language regarding list of national practices with list of FOTG practices.

#### **Subsection 1469.9 Technical Assistance**

This section allows the use of NRCS certified technical service providers and we agree that they should be used and will be needed. This section also calls for the plans to be developed by NRCS certified conservation planners. We would like to see NRCS be able to assist everyone develop a conservation plan. However, we all know that is not realistic as there is not enough staff to fulfill that demand. There also are more TSPs and NRCS staff members that are more “practice specific” and do not all have “systems planning” expertise. However, there are farmers and ranchers as well as non-governmental organizations that do have the expertise but they are not NRCS certified conservation planners. Therefore, we would oppose this language in the context of serving as a barrier to someone who sought assistance from someone other than an NRCS certified conservation planner. NRCS has approval authority over the plan and we urge that it

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should read as such. Thus we suggest changing paragraph (e) to read as follows:  
Conservation security plans will be approved by NRCS.

### **Subpart B – Contracts and Payments**

#### **Subsection 1469.2 Application for contracts and their selection**

- (b) Strike completely. As stated earlier, we are opposed to limited enrollment categories. The CSP should be operated under a continuous sign-up process. Moreover, we are absolutely opposed to the lack of transparency being fostered by such a process. Items 1-7 of this section were drafted under the assumption that the CSP will remain a capped program. Because we are once again going to be operating with entitlement status, these no longer apply.
- (c) Strike the following "...according to the timeframes specified in the sign-up announcement" and replace with "from qualified farmers and ranchers."
- (c)(2) Strike all language. As stated many times before, we oppose short, infrequent sign-ups and prefer continuous sign-ups.
- (e) Strike all language. We are opposed to enrollment categories just as we are to limited sign-ups.
- (f) We are opposed to the conservation plan coming after the applicant has been approved. We understand that there will be some self-screening measures to assist farmers/ranchers with understanding if they may qualify. However, they should not be discouraged from seeking assistance with NRCS. Also, the planning process should be part of the enrollment process. Therefore, we urge you to change the language to read as follows: "NRCS will schedule a time with an applicant to either construct a conservation plan or to approve a plan that was developed by the applicant. Upon plan approval NRCS will develop a conservation security contract...."

#### **Subsection 1469.21 Contract Requirements:**

- (b) Strike the following "per agriculture operation." We are opposed to the creation of any loopholes that would allow a participant to evade the mandated payment limitations. In addition, all payments should be directly attributed to the participant's social security number.
- (c)(1-3) Strike all because it refers to additional requirements based on their enrollment category. We oppose the establishment of enrollment categories and urge you to remove them completely. We are also opposed to such elements of the rule that leave many things left unanswered. That makes it difficult to accurately assess the proposed rule.
- (d)(3)(1) Strike the following "...and comply with any additional sign-up requirements"

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- (d)(3)(iii) Strike the following "...on the violation of a term or condition of the contract" and replace with "...should the participant fail to correct a violation of a term or condition of the contract within 30 days of written notice from NRCS.
- (d)(6) Strike the following "...or included as requirement for the sign-up."

### Subsection 1469.23 Program payments

The four types of payments under the proposed rule include: 1) annual base payment; 2) annual existing maintenance practice payment; 3) one-time payment for new practices installed; and 4) enhanced payments. The area that is undefined or unclear is if the one-time payment for new practices will qualify for maintenance payments in the years following. In an effort to encourage people to install and maintain needed practices, the new practices should be eligible for maintenance payments and considered "existing practices" once they have been installed.

It would be logical provide a payment structure as follows:

- 1) Annual base payment
- 2) Maintenance payments for practices that are installed at the time of the contract and are applicable to the resource(s) of concern under the conservation security contract
- 3) cost-share payments for installation of new practices
- 4) Maintenance payments for new practices installed as part of the CSP contract
- 5) An enhanced payment that actually serves as a bonus by providing more than just the cost of installation and management of activities that improve the resource(s) condition beyond the RMS level, require more than the minimum criteria in the practice standard and provide additional resource benefits.

- (a) Base component of CSP payments:
  - (a)(1) The rule should establish base payments based on NRCS land capability classes, not based on current land use. Rental rates for pasture are far lower than that of cropland. If NRCS were to figure base payments on land use, payments would be far lower for grazers, even if their land is fully capable of producing crops and, in a different owner or operator's hands, might well be cropped, perhaps at significant harm to the environment. Land which has been placed in permanent cover, a practice with enormous environmental benefits, should not be penalized financially. This program is about rewarding environmental performance and it should thus encourage should behavior through an appropriate payment structure.
  - (a)(2)(ii) We are opposed to the 90% reduction factor that has been created by NRCS. This does not exist in law and should be removed from the proposed rule. Therefore, we are calling on you to strike the following from this paragraph "...then take a nationally set percentage of that average rate for a final rate."

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- (a)(v) Strike the following "...multiplied by a factor of .1." Again, this does not exist in law and should be eliminated.
- (a)(5) Strike the following "...at the time of the first sign-up" and replace with "upon program implementation."
- (b) Existing practice component:
  - (b)(2) Strike the following words "...but not limited to," from the first sentence. This is too vague and provides for little understanding of what it could mean for program implementation. Also, NRCS is charged with providing payments for existing practices so the word "may" should be changed to "shall" or "will." Also, strike the following from the last sentence "at the time of the sign-up announcements."
- (c) New practice one-time payments
  - (c)(1) Strike all of this language. All applicable practices should be available for participants to include in the conservation security plan and contract.
  - (c)(2) Again, strike the word "may" and replace it with "shall" or "will." Also, strike any mention of "at the time of each CSP sign-up announcement" and make cost-share rates available upon program implementation. Cost-share rates should be very close to those established for the same practices under EQIP.
- (d) Enhancement component of CSP payments
  - (d)(2) This section establishes what is required to qualify for an enhanced payment. We suggest striking the word "may" and replace with "will" or "shall" in the first sentence. If the participant meets and carries out the requirements established in this section for an enhanced payment then NRCS should expect that they "will" give them an enhanced payment.
  - (d)(2)(i) Strike the following "in the sign-up announcement."
  - (d)(3)(i and ii) Again, strike the following "as outlined in the sign-up announcement."
  - (d)(5)(ii) The enhanced payment is to serve as a real bonus part of the CSP because the participants will be going above and beyond the call of duty and will provide additional public benefits for undertaking such activities. But when the proposed rule establishes that participants should not receive more than the cost of the activities undertaken, it fails to fulfill this vision. Thus, we urge you to strike the following "This amount will not exceed the participant's estimated cost of undertaking such activity." Actually providing incentive payments that serve as real incentives will be the pivotal point in determining if the CSP exceeds its expectations. If we don't provide real incentives to go above and beyond the minimum, we will fail to motivate participants to be innovative and develop exceptional farming systems that focus beyond a few given practices. The enhanced portion of the payment structure provides us a real opportunity to encourage "farming systems" thinking. The payment rate should reflect that opportunity.

- (a)(v) Strike the following "...multiplied by a factor of .1." Again, this does not exist in law and should be eliminated.
- (a)(5) Strike the following "...at the time of the first sign-up" and replace with "upon program implementation."
- (b) Existing practice component:
  - (b)(2) Strike the following words "...but not limited to," from the first sentence. This is too vague and provides for little understanding of what it could mean for program implementation. Also, NRCS is charged with providing payments for existing practices so the word "may" should be changed to "shall" or "will." Also, strike the following from the last sentence "at the time of the sign-up announcements."
- (c) New practice one-time payments
  - (c)(1) Strike all of this language. All applicable practices should be available for participants to include in the conservation security plan and contract.
  - (c)(2) Again, strike the word "may" and replace it with "shall" or "will." Also, strike any mention of "at the time of each CSP sign-up announcement" and make cost-share rates available upon program implementation. Cost-share rates should be very close to those established for the same practices under EQIP.
- (d) Enhancement component of CSP payments
  - (d)(2) This section establishes what is required to qualify for an enhanced payment. We suggest striking the word "may" and replace with "will" or "shall" in the first sentence. If the participant meets and carries out the requirements established in this section for an enhanced payment then NRCS should expect that they "will" give them an enhanced payment.
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- (d)(5)(iii) Once again, strike the following "...prior to the CSP sign-up announcements."
- (g) The Chief should not be allowed to arbitrarily redefine or retarget payments and conservation activities. This could only serve to disrupt continuity and would be a disservice to conservation and any participating farmers and ranchers. Thus, we strongly urge you to strike this paragraph in its entirety.

Thank you for the opportunity to comment on this rule and for considering our views. We believe our comments and recommendations will help create a program that more closely resembles a conservation program that will provide enormous public benefits and encourage farmers and ranchers to continue to be good stewards of the land.

Sincerely,

Traci Bruckner  
Policy Analyst – Rural Policy Program  
Center for Rural Affairs  
(402) 687-2103, ext. 1016  
tracib@cfra.org

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