



March 2, 2004

Mr. David McKay
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Natural Resources Conservation Service, USDA
PO Box 2890
Washington, DC 20013-2890
Attn: Conservation Security Program

Via U.S. Mail and electronic mail

RE: Comments on the Proposed Rule for the Conservation Security Program, 69 Fed. Reg. 194 et seq. (January 2, 2004).

On behalf of the Natural Resources Defense Council ("NRDC") and its 550,000 members nationwide, we submit the following comments regarding NRCS's proposed rule to implement the Conservation Security Program ("CSP") under the Farm Security and Rural Investment Act of 2002 ("2002 Farm Bill").

GENERAL COMMENTS

NRDC's overarching concerns with the proposed CSP rule concern NRCS' attempts to both restrict and disfavor participation in the program. During the recent budget appropriation process Congress restored an estimated \$3-plus billion to CSP, for an estimated total of at least \$7 billion over the next ten years. However, the proposed CSP rule is designed to implement a substantially smaller, capped program that does not take into account the current unrestricted funding level. As a result, the proposed rule impermissibly restricts participation in the program based on geographic location. The proposed rule also contravenes the statute by requiring participants to achieve NRCS conservation standards prior to becoming eligible for participation in CSP, rather than allowing farmers to achieve those standards during CSP participation. NRDC is also concerned that the proposed CSP payment rates, which are substantially lower than other conservation programs administered by NRCS, will dissuade farmers from participating in the program and diminish the actual benefits of CSP from those envisioned by Congress. While we strongly support NRCS's interest in using CSP to promote on-farm demonstration projects, we are concerned that the proposed rule does not ensure that this will occur. NRDC urges NRCS to issue a "supplement" to reflect CSP's status as an uncapped entitlement program beginning October 2004, as the agency discussed in the preamble to the proposed rule. Below, we outline our comments in more detail and provide recommendations on specific provisions of the proposed CSP rule.

SPECIFIC COMMENTS

In the comments below we address provisions of the proposed CSP rule in the order outlined in the Federal Register notice. This order does not in any way reflect the importance NRDC places on any provision.

§ 1469.3 Minimum level of treatment

The proposed rule requires producers to meet a “minimum level of treatment” standard to be eligible to participate in CSP instead of the stronger non-degradation standard required by Congress. The rule defines the minimum level as that which meets or exceeds the quality criteria according to NRCS Field Office Technical Guides (FOTGs). 69 Fed. Reg. 194, 217-18 (January 2, 2004), proposed rule at § 1469.5(4)). However, the statute mandates that producers “adequately protect, and prevent degradation of” one or more identified resources to participate in the program. CSP § 1238(8). This is a higher standard than that proposed by the rule. Many FOTG quality criteria themselves may not be sufficient to prevent degradation as required by the statute. For example, the national quality criteria for water include many instances where the standard is merely to “minimize” an impact. For example, “[u]se and management of land and water are coordinated to minimize impacts on surface water temperatures.” Resource Quality Criteria, Water, NRCS, Davis, California, August 15, 2003. In such instances, the “minimum level of treatment,” as proposed, will not result in a non-degradation standard as required by law.

NRDC Recommendation: NRCS should make CSP participation conditional on attaining the non-degradation standard as required by law. This will reward producers who are implementing the very best practices and motivate the rest.

§ 1469.4 Significant resource concerns

The proposed rule requires every state and region of the country to adopt soil quality and water quality as their primary resource concerns to be addressed by the program, even if other concerns, such as soil erosion, water conservation, threatened or endangered species habitat, biodiversity, prairie restoration, or some other concern is of paramount importance.

NRDC Recommendation: The rule should allow the conservation resource concern priorities to be set at the state level so the program can be as responsive as possible to the major resource issues in each region of the country. One solution would be to have each state include soil quality and water quality among their top 5 resource concerns and have farmers choose to address at least 2 of the 5 (tier 1 and tier 2) and all 5 (tier 3).

§ 1469.5 Eligibility requirements and selection and funding of priority watersheds

Eligibility requirements

The proposed rule sets the entry point too high. As currently written, the highest NRCS conservation standards for soil and water quality would have to be achieved *prior to* becoming eligible for the CSP. This is contrary to the statute’s requirements, which provides that the relevant conservation standards must be met *as a result of* participation in the program. For Tier 3 participants, the proposed rule would require every NRCS conservation standard to be met prior to enrollment. As a result, NRCS’ proposed rule would limit participation to farmers who

have already addressed all their major conservation needs, denying program participation to farmers who need financial and technical assistance to implement new environmentally beneficial practices. CSP should reward farmers who are already implementing environmentally friendly practices and provide incentives for them to do more, but in order to maximize actual environmental benefits, the program should also encourage other farmers to transition to sustainable farming practices.

NRDC Recommendation: The final rule should retain high environmental standards, but it should allow farmers and ranchers to achieve those high standards as a result of participating in the program. CSP contracts could specify that all applicable conservation standards must be met by the end of the third year.

Tenant farmers

The proposed rule states that where a tenant farmer cannot convince a landlord to provide a degree of tenure security, USDA will not provide any CSP payments on the land in question, yet will still require the farmer to meet all of the CSP requirements on the land. This is unfair and would likely dissuade producers from participating in the program.

NRDC Recommendation: The rule should provide fair treatment for tenants, allowing a tenant's CSP contract to exclude such land entirely, or allowing the farmer or rancher to receive CSP payments on land meeting CSP standards as long as the tenant controls the land.

Selection and funding of priority watersheds

The statute does not contain any terms that could be construed to geographically limit producer eligibility. Rather, the statute provides that in order to be eligible to participate in CSP, a producer must develop and submit a conservation security plan to USDA and enter into a conservation security contract. CSP § 1238A(b). The statute further states that private agricultural land, land under the jurisdiction of an Indian tribe, and incidental forested land shall be eligible to participate in the program. Id. However, the proposed rule purports to impermissibly limit CSP eligibility to farmers located in priority watersheds. NRCS' attempt to limit farmer eligibility in this fashion contravenes the language and spirit of the statute and is otherwise arbitrary and capricious. Because CSP is an uncapped entitlement program beginning October 2004, it is entirely unnecessary as a practical matter to limit participation based on priority watersheds. At the end of the day, restricting the pool of potentially eligible farmers to those located in priority watersheds would have the result of greatly limiting the absolute number of farmers who can participate in the program, ultimately reducing environmental benefits.

NRDC Recommendation: The final CSP rule should not limit program participation to farmers located in priority watersheds. CSP should be a nationwide program available to all types of producers in all regions of the country with all types of conservation objectives, as provided by law. As explained above, NRDC believes that restricting CSP participation based on priority watersheds is illegal. However, in the event that NRCS ignores the law and moves forward with prioritizing CSP projects based on watersheds, NRCS should develop a priority watershed selection process that will result in selecting a balance of watersheds that are impaired by agricultural pollutants, such as nutrients, sediment, and pesticides, as well as waters that are

threatened by agricultural pollutants and outstanding waters or those that have special biological value as wildlife habitat.

§ 1469.6 Enrollment categories

The proposed rule provides that the Chief will announce the order in which categories are eligible to be funded at the beginning of each sign-up period. Proposed rule at 1469.6(d). However, given the diversity of watersheds across the country and the need to prioritize different goals in different watersheds, it does not make sense for NRCS to dictate a general order for enrollment categories that will apply to all priority watersheds.

NRDC recommendation: NRCS should allow the state conservationist to select the enrollment priorities for individual priority watersheds based on the needs of each watershed. With respect to funding CSP contracts in priority watersheds that are impaired by agricultural pollutants, NRCS should require participants to enter contracts at tier 2 or tier 3 because maintenance of activities in polluted watershed is not going to clean up the water. Participants in such watersheds should be encouraged through enhancement payment to perform monitoring in order to gauge the effectiveness of contracts in polluted watersheds at improving water quality.

§ 1469.8 Conservation practices

The proposed rule would provide payments for a “very limited number” of conservation practices. The law does not authorize this dramatic scaling back of normal NRCS practice of providing support for all NRCS-approved conservation practices. Moreover, the law specifically authorizes the use of new, innovative practices through on-farm demonstration and pilot testing. The proposed restriction is not consistent with NRCS’ policy of “site-specific” conservation and will stifle farmer innovation.

NRDC Recommendation: The final rule should allow the full range of NRCS-approved practices to be eligible for consideration as part of site-specific CSP conservation plans and systems with the exception of the livestock waste management practices and heavy equipment practices explicitly excluded in the statute. The final rule should also encourage farmer innovation through a robust process for on-farm demonstration and pilot testing of innovative practices. While there may eventually be a number of conservation practices that stand out as commonalities across CSP plans, having NRCS pick the “winners” upfront unnecessarily restricts flexibility and innovation.

§ 1469.9 Technical Service Providers

The proposed rule will enable unqualified third parties to help guide growers’ conservation efforts. The statute requires NRCS to “provide technical assistance to producers for the development and implementation of conservation security contracts...” CSP § 1238C(g). The proposed rule attempts to satisfy this requirement by allowing third party consultants certified under its Technical Service Provider program to assist producers in developing and implementing CSP plans.

Unfortunately, the existing TSP rule sets the bar very low to qualify third-party experts, which has resulted in widespread certification of contractors who lack the necessary expertise to promote model conservation practices. For example, NRCS has designated the American

Society of Agronomy as a certifying agency, automatically certifying the 14,000 holders of its Certified Crop Advisor (CCA) certification as TSPs. These TSPs are allowed to guide growers around the country to implement integrated pest management, nutrient management and other conservation practices under Farm Bill programs, including CSP. However, the CCA certification only requires a very general understanding of these conservation systems, and it is insufficient to ensure expertise within any particular conservation practice or commodity. In California, CCAs are not even qualified by law to make pest control recommendations. California's more rigorous Pest Control Advisor (PCA) certification, which requires considerably more hours in coursework and training, itself provides only minimal training in integrated pest management. Many California PCA's work directly for chemical companies and as a result have little incentive to promote pesticide use reduction. In an attempt to ensure that California TSPs have adequate expertise in integrated pest management, NRCS staff in California have considered developing additional TSP certification criteria. Unfortunately, efforts to require additional TSP certification criteria in California have stalled because NRCS headquarters has indicated that TSP criteria can only be developed at the national level.

NRDC Recommendation: We urge NRCS to develop additional criteria for qualifying Technical Service Providers to participate in the Conservation Security Program, possibly by creating an "Advanced TSP" certification. If the CSP is to foster the very best conservation practices, then it must be implemented under the guidance of the very best TSPs. A general understanding of conservation practice concepts is not sufficient. Instead, TSPs must have real expertise in model conservation practices, including knowledge that is specific to commodity and region. Separate criteria should be developed for integrated pest management, nutrient management, irrigation, energy efficiency, air quality control and other practices. Above all, states should be permitted to adopt more stringent criteria for certifying TSPs to provide technical assistance to CSP participants.

§ 1469.20 Application for contracts and their selection

The proposed rule envisions infrequent, limited duration CSP enrollment periods, rather than the continuous sign-up process envisioned during congressional debate on the farm bill. This could make it difficult for farmers to sign-up if the limited period falls within planting and growing seasons. It would also concentrate requests for NRCS technical assistance in a limited period rather than spread out over the course of a full year.

NRDC Recommendation: The rule should provide for a predictable, continuous, nationwide signup process.

§ 1469.21 Contract requirements

The statute explicitly provides farmers the right to renew their CSP contract for a 5 to 10 year period. See CSP § 1288A(e)(4). The statute only limits this right for Tier I conservation security contracts, which the farmer can overcome by agreeing to apply additional conservation practices on land already enrolled in the program or to adopt new conservation practices on another portion of the operation. See CSP § 1288A(e)(4)(B). Nevertheless, the proposed rule provides that "[c]ontracts are not renewable unless determined by the Chief as described in § 1469.24." 69 Fed. Reg. 194, 221 (January 2, 2004), proposed rule at § 1469.21(f). This provision of the proposed rule is also confusing because it references section 1469.24, which

relates to contract modifications and transfers of land, not any criteria that the Chief may consider in evaluating whether to renew a contract. As a result, the proposed rule contravenes the clear language of the statute by impermissibly denying the producer's right to renew a CSP contract. In addition, as a policy matter, leaving producers with the uncertainty of whether their CSP contract is likely to be renewed is inconsistent with the spirit of CSP -- to provide incentives to producers to *maintain* practices that benefit the environment for the long term.

NRDC Recommendation: In order to succeed in maintaining and enhancing environmentally friendly practices long term and to properly implement Congress' intent, NRCS must provide farmers in good standing with the option of renewing their participation in the program.

§ 1469.23 Program payments

Payment structure

The proposed rule adopts incredibly low payment rates. The proposed rule and the NRCS "benefit-cost" economic assessment that accompanies the rule declare CSP farmers should receive:

- far lower cost-share assistance than farmers receive in any other USDA conservation program, as low as just 5% of costs;
- base payments, the basic incentive to sign up for the program and design and maintain conservation practices, equal to 0.5%, 1.0%, or 1.5% of local cash rental rates, depending on tier of participation, a 90% reduction from the level established by the law by law; and
- enhancement payments for exceptional conservation efforts at just 10-20% of the farmer's out of pocket costs.

Instead of providing meaningful incentives and financial rewards for outstanding environmental effort and performance as envisioned by the law, the proposed rule would require farm families cover the vast majority of costs of implementing and maintaining conservation systems out of their own pocket. The payment structure needs to be radically revised or the program has no hope of succeeding.

NRDC Recommendation: The rule should establish cost-share rates that are comparable to other USDA conservation programs. Cost-share rates for newly installed practices should be equivalent to the rates under the Environmental Quality Incentives Program. Cost-share rates for the management and maintenance of existing conservation practices should be set at the 75% maximum rate established in the statute. See CSP § 1238C(b). In addition, base payments should be set at the rates established in the statute (average national per acre rental rate for a specific land use during the 2001 crop year or another appropriate rate that ensures regional equity) without the 90% reduction.

Enhancement payments for demonstration projects

NRCS should encourage on-farm research and demonstration projects through CSP. The proposed rule allows State Conservationists to make enhancement payments available, at their discretion, to producers who participate in "on-farm conservation research, demonstration or

pilot projects.” 69 Fed Reg. 194, 221 (January 2, 2004), proposed rule at § 1469.23(d)(3)(i). However, the proposed rule fails to ensure that enhanced payments will be available for such practices. The rule also fails to specify what the payments will be for this activity or how such payments will be calculated.

NRDC Recommendation: NRCS should make every effort to leverage CSP funds to promote on-farm demonstrations of model practices. In contrast with funding individual producers to implement conservation plans, demonstration projects by individual producers or groups of producers yield: 1) urgently needed contributions to our knowledge about the cost and efficacy of specific conservation practices; 2) increased likelihood that other producers will adopt effective conservation practices; and 3) greater accountability to taxpayers who will otherwise be funding conservation programs that get implemented in obscurity, resulting from NRCS' confidentiality policies for individual conservation plans. In California, University of California researchers have partnered with growers to demonstrate Biologically Integrated Farming Systems on working farms to demonstrate alternative systems in almonds, apples, pears, rice, walnuts, wine grapes and other commodities. See <http://www.sarep.ucdavis.edu/>. These projects typically farm alternative systems next to conventionally farmed blocks so that direct comparisons can be made. Comprising only a handful of projects in a few commodities, these efforts have played a significant role in influencing California producers within specific commodities about more sustainable practices. We specifically urge NRCS to:

- Require the availability of enhancement payments for producers who implement farm demonstration projects. Additional criteria should be developed to ensure that demonstration projects are evaluated by an objective third party (e.g. academic researcher, Resource Conservation District, non-profit organization, etc), designed to yield useable data for evaluating the costs and efficacy of the demonstrated practices, including environmental monitoring, and include a plan for documenting project findings and making them available to the public.
- Make enhancement payments substantial, particularly for demonstration projects. The benefits provided by on-farm research and demonstration projects are so great that NRCS is justified in allocating a substantial fraction of the program to encourage these activities. We are very concerned that NRCS has not provided the “best” growers with adequate incentive to participate in the program. We support payments at or near the full amount permitted by statute and recommend that NRCS apportion the payments, largest to smallest, to enhanced payments, cost shares, and base payments. Allocating the greatest portion of CSP funds to enhanced payments is justified both to encourage demonstration projects and to encourage other activities prioritized by state conservationists.

Base payments for pasture and grazing land

In determining base payments for pasture and grazing land, the proposed rule would determine the cash rent value of the land based on how the land is being used currently rather than by land capability. Since rental rates for pasture are far lower than for cropland, base 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. Land that has been placed in permanent cover, a practice with enormous environmental benefits, is unwisely penalized by the proposal.

NRDC Recommendation: The rule should establish base payments based on NRCS land capability classes, not based on current land use.

ADDITIONAL COMMENTS

Management-intensive practices

Despite the statute's clear mandate to reward producers who adopt diversified resource-conserving crop rotations, managed rotational grazing systems, or conservation buffers with enhancement payments, see CSP § 1238C(b)(C)(iii), the proposed rule does not mention rewarding farmers who implement these management-intensive practices. It would be inconsistent with the clear language of the statute and congressional intent for NRCS to drop these statutorily-recognized preferences from eligibility for enhancement payments.

NRDC Recommendation: USDA should make the enhancement payments for these big pay-off conservation systems a highlight of the program by providing direct, substantial incentives for farmers and ranchers to adopt them. The rule should explicitly name these conservation systems as qualifying for enhancement payments on a nationwide basis.

Organic Practices

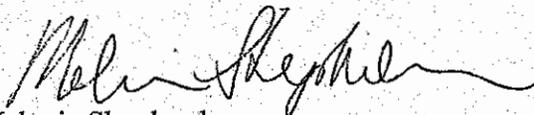
Despite hundreds of earlier requests from the public to USDA, the proposed rule is silent on how the Department will coordinate participation in the CSP for organic farmers who are certified under USDA's National Organic Program (NOP). Leaving this important issue unaddressed would put the program coordination and paperwork burden on organic farmers, rather than on the USDA.

NRDC Recommendation: The final rule should include a clear mechanism for coordinating participation in the NOP and the CSP. USDA staff should deliver these complementary programs in the most farmer-friendly, least burdensome fashion possible.

CONCLUSION

Thank you for considering our comments. If you would like to discuss any of our recommendations further, please contact us. We look forward to working with NRCS at both the national and state level to implement CSP.

Sincerely,



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