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**From:** shopper@environmentaldefense.org  
**Sent:** Tuesday, October 05, 2004 9:40 PM  
**To:** FarmBillRules  
**Cc:** Derickson, Craig  
**Subject:** Attn: Conservation Security Program  
**Attachments:** ATTACHMENT.TXT; CSP - comments on int final rule 10.5.04.doc

Attached are Environmental Defense's comments on the CSP interim final rule. Please contact me, or Tim Searchinger at 202-572-3344, with any questions. Thanks!

<<CSP - comments on int final rule 10.5.04.doc>>  
Sara Hopper  
Environmental Defense  
Center for Conservation Incentives  
1875 Connecticut Avenue, NW  
Washington, DC 20009  
(202) 572-3379 (direct)  
shopper@environmentaldefense.org

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COMMENTS OF ENVIRONMENTAL DEFENSE ON THE INTERIM FINAL RULE  
FOR THE CONSERVATION SECURITY PROGRAM  
October 5, 2004

Environmental Defense respectfully submits the following comments on the interim final rule for the Conservation Security Program (CSP), published in the Federal Register on June 21, 2004.

**1. Watershed limitations and enrollment categories are inappropriate for an uncapped program.**

Environmental Defense believes that CSP has great potential to enhance the environment and reward farmers for good stewardship. We continue to support its operation as an entitlement program in which all who meet its eligibility criteria may enroll.

We supported the special watershed limitations and enrollment categories NRCS developed for the program in fiscal 2004 as a reasonable response to budget caps imposed by Congress. As we pointed out in our comments on the proposed rule, however, we also believe that these limitations are not justified in years in which the program is uncapped. Since release of the proposed rule, Congress has lifted the overall spending cap of \$3.77 billion over 10 years it imposed as part of the FY03 Omnibus Appropriations Act. Congress left in place a \$41 million cap for FY04. While it is certainly possible that annual spending caps will continue to be imposed on the program, there is also a possibility that the program will be uncapped in FY05. Currently the Senate version of the FY05 Agriculture Appropriations Bill allows an uncapped CSP.

We therefore restate the suggestions we offered after publication of the proposed rule – that NRCS revise the rule to allow for a full national program in any uncapped year, keeping the provisions relating to the watershed selection process and enrollment categories only for years in which Congress imposes a budget cap.

We understand the agency's concerns about administrative burden, but we believe that NRCS can devise ways to minimize this burden while still offering a full program that is truly effective in "rewarding the best and motivating the rest" to higher levels of environmental performance, achieving measurable environmental progress in the meantime. For example, we believe that a full national program is consistent with a sign-up mechanism that uses rotating sign-ups in portions of states, so long as the rotations come around fairly quickly. Such a system might allow a concentration of skilled employees in the enrollment area. However, enrollments based on priority criteria or enrollment rotations that do not recur frequently imply a more selective program.

Much good work was done for the first sign-up on establishing enrollment categories. In a national program, categories would have no role. Similar content, however, can be used to fine-tune eligibility criteria and to establish enhancement payments.

**2. Indices to measure environmental performance should be used to establish both eligibility criteria and payment levels.**

We support the agency's efforts to move in the direction of performance-based indices to measure levels of performance, using these indices both to establish eligibility criteria

and to determine enhancement payments. In guidance for the actual sign-up, NRCS established use of its rangeland health index, the pasture health index, and the soil conditioning index. We supported these efforts, and are pleased that in the interim final rule, NRCS made minimum eligibility criteria more specific in some cases, for example, by establishing a SCI of 0.0 or greater for soil quality. However, criteria for other elements of soil and water quality remain vague and variably applied in practice. Existing quality criteria were developed for broad planning purposes and generally do not set forth objective indicators for determining whether resource concerns are addressed that can be applied easily at the farm and ranch level.

In our comments on the interim final rule, we urged NRCS to use for water quality primarily existing indices for soil erosion and pesticide management, and that it quickly develop an index for nutrient management and riparian health by adapting existing tools, and that it adapt irrigation tools for irrigated farms. We believe the final rule should explicitly require the use of such indices for setting eligibility criteria even if ultimate criteria are left out of the rule itself.

Wildlife indices used to assess whether individual farms were addressing wildlife concerns during the recent signup were also highly variable and sometimes made little sense or yielded relatively arbitrary results. These indices need to be standardized for eligibility purposes. (For enhancement payments, we believe additional criteria should be used.)

As we stated in our comments on the proposed rule, so long as CSP sets meaningful minimum eligibility criteria and adequately rewards farmers based on the degree to which they exceed them (i.e., rewards higher levels of environmental performance), we believe this program will help willing farmers and ranchers across the country achieve real environmental progress.

### **3. Enhancement payment levels should be more explicitly tied to overall performance in addressing resource concerns.**

Again, we strongly supported the agency's decision, reflected in the proposed rule, to use management intensity levels as the basis for enhancement payments, and we urged NRCS to also use management intensity levels (performance based wherever possible) to reward good stewardship, whether new or existing, and to quickly refine intensity measures into workable, performance-based indices, using existing tools wherever possible.

We recommended that NRCS establish at least four management intensity levels for addressing resource concerns, with the first level representing the minimum criterion, and producers who meet these levels eligible for the program and stewardship payments. Producers meeting higher levels would then qualify for higher payments to reward their higher level of environmental performance. In our comments on the proposed rule, we listed the benefits of this kind of performance-based system, including: providing transparency and consistency and greater simplicity (everyone knows what the levels are, as opposed to a program in which nationally significant resource concerns may change

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from signup to signup); providing opportunities for farmers and ranchers to increase their participation (and payments) not just by adding practices but by improving how well they implement existing practices and address resource concerns; encouraging innovation, because a truly performance-based system allows participants to choose least-cost practices and take advantage of new technologies; and generally rewarding systems and overall management rather than individual conservation practices.

To a large extent, enhancement factors in the first sign-up relied on lists of individual practices. Some enhancement factors were also ambiguously defined. As a whole, it makes less sense to reward farmers for implementing individual enhancements than it does to reward them for lifting their overall levels of performance in addressing various resource concerns. For these reasons, too, the development of additional indices to assess levels of addressing resource concerns is critical. Lists of practices should only be used as surrogates until performance-based, quantifiable indices are developed, and the agency should move expeditiously to develop those.

#### **4. Payment levels should be adjusted.**

The rule should clearly set forth a general intent to establish higher incentive payments in the first years of a first contract and then to have these incentive payments decline. In general, the economic literature shows that far greater incentives are needed to persuade a producer to adopt a practice for the first time than to maintain a practice. That makes common sense as well because producers must address the risks of adopting a new practice and sometimes must purchase new equipment and devote additional time to management. It therefore makes sense to structure incentive payments on a temporal sliding scale with higher payments first.

We continue to be concerned that the payment structure NRCS has established for CSP will not be as effective in achieving program objectives as alternative approaches would be. For example, we disagree with the agency's decision to cap cost-share rates at 50% of the cost of installing new practices. While this may be sufficient for practices that will provide an economic benefit to the producer in addition to off-site environmental benefits, for practices that bring only off-site benefits that accrue to society as a whole, 50% cost-share may not be a sufficient incentive to adoption of these new practices. A one-size-fits-all approach will be less effective than allowing cost-share rates to be determined practice by practice.

We are also very concerned that the new, overall cap on CSP contract payments (limiting the combination of stewardship, existing practice and enhancement payments to no more than 15% of the cash rental rate for the land covered by the contract for Tier I, 25% of the same for Tier II, and 40% for Tier III) will have inequitable results. The problem is that conservation effort and benefits will often not correlate with rental rates. For example, on rangeland, a high level of environmental performance related to the control of invasive species requires a higher payment to offset the high costs, but rangeland rental rates are generally low. In our comments on the proposed rule, we also argued that basing stewardship payments on cash rental rates, even regional or local ones, could result in

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perverse incentives and penalize some of the nation's best stewards. We suggested, and continue to suggest, that NRCS instead base payments on the land's agricultural potential, or land capability class, to ensure that CSP does not reward more intensive agricultural uses over well-managed grass- or pasture-based uses that may have fewer negative environmental impacts.

We are aware of the Administration's desire to control the cost of CSP. It is critical, however, that this be done in a way that ensures the most environmental benefits at the least cost, not in a way that unnecessarily or unfairly limits the environmental progress possible under this program. We believe a better way to address the Administration's cost concerns is to use performance-based indices to adjust eligibility criteria and payment rates over time to work within a reasonable budget while still providing meaningful assistance to farmers and ranchers supplying the public with measurable environmental benefits.

The final rule should also recognize the statute's particular emphasis on enhancements that involve changes in land use, such as rotational grazing systems, buffers, and resource-conserving crop rotations. In our comments on the proposed rule, we urged NRCS to provide higher payments to encourage shifts from more intensive forms of agriculture. The final rule should recognize their significant value by recognizing their entitlement to enhancement payments.

**5. Field evaluations for applicants and development of at least an outline of the conservation security plan are critical to ensuring CSP delivers real environmental benefits.**

We believe it is critical that farmers and ranchers are accepted into CSP only after on-farm evaluations of their operations by NRCS field staff. Self-assessment procedures, which can be further improved and made more specific, are valuable as a screening tool, but we believe it is unrealistic to assume that a producer's environmental performance can be accurately evaluated based on the self-assessment and a follow-up interview. We have also recommended that a "proposed conservation plan outline" be completed as part of the benchmark condition inventory. Development of at least an outline of the conservation security plan will help farmers and ranchers identify what improvements in environmental performance they will make through either new practices or better implementation of existing practices, and will help the agency determine appropriate payment levels.

We understand the Administration's concerns over the statute's 15% cap on technical assistance costs. We believe, however, that if a change to the 15% cap on technical assistance is required to ensure that NRCS has the resources it needs to implement CSP effectively, then the Administration should request that change. We also encourage NRCS to evaluate what activities are counted as CSP technical assistance, and to ensure that this is consistent with the manner in which the technical assistance costs for other farm bill conservation programs are attributed to those programs.

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**6. Conservation Security Plans should provide sufficient details regarding management activities to be conducted under the contract.**

The CSP statute contemplated a true conservation plan – a document that in significant technical detail sets forth the conservation practices and activities included in the management of the land subject to the contract. This is necessary to help farmers and ranchers achieve anticipated environmental benefits. We believe it is important that the final rule set forth in greater detail what is required in a conservation security plan. NRCS should also develop model plans for its field staff and program applicants.

Many of the suggested rule language changes Environmental Defense submitted for the proposed rule remain relevant. We will resubmit our earlier suggestions, updated to reflect changes in the interim final rule, under separate cover.

Please contact Tim Searchinger at 202-572-3344 with any questions. Thank you for considering our comments.