

**Conservation Security Program  
Summary of Interim Final Rule as Amended  
March 24, 2005**

The Natural Resources Conservation Service (NRCS) is issuing an amendment to its interim final rule with a request for comments. This interim final rule implements the Conservation Security Program (CSP) set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, Public Law 99-198, 16 U.S.C. 3801 et seq., as amended by the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002, Public Law 107-171.

- This amendment describes how NRCS will implement the CSP to provide financial and technical assistance to agricultural producers who conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities.
- This amendment also addresses public comments that NRCS solicited in rulemaking published June 21, 2004, in the Federal Register and experience during the 2004 CSP sign-up. Comments must be received within 120 days after the publication date in the FEDERAL REGISTER.

**Overview**

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, May 13, 2002) (the Act) amended the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) to authorize the Conservation Security Program (CSP). The program is administered by USDA's Natural Resources Conservation Service (NRCS). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land and other noncropped areas that are an incidental part of the agriculture operation.

**Snapshot of Key Changes**

1. Removed the regulatory contract cap.
2. Extended the contract length to ten years when a Tier I contract transitions to a higher tier level.
3. Increased the cost-share limit for limited resource and beginning producers to up to 65 percent for new practices. All other contracts are at 50% cost-share.
4. Took steps to protect and enhance riparian corridors by adding a specific eligibility requirement for entry into Tier III contracts. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface runoff; reduce nutrients and other pollutants in shallow subsurface water flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods.
5. Increased the enhancement payments limit to:
  - \$13,750 for Tier I
  - \$21,875 for Tier II, and
  - \$28,125 for Tier III

6. Expanded the definition of agricultural land to include most specialty crops including those with low input systems to allow inclusion of products such as sugar maple and ginseng. Greenhouses and above ground nursery planting is included in “other land”.
7. Allowed more local input by requiring contracts to address a pressing locally significant resource concern determined by watershed for Tier II contracts. Tier II applicants will only be required to address this concern if it is applicable to their operation and not already fully addressed to NRCS’ quality criteria. Otherwise this requirement will be considered satisfied.
8. Limited participants to receive payment shares from only one contract at any time.
9. Eliminated payments of any kind for “construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations” as stipulated in the statute.
10. Established ability to set variable enhancement payment rate for the enhancement included in the initial contract year. Using a variable payment rate enables additional contract capacity in the out-years to add more enhancements. All enhancements added after the initial year will be paid at a set rate of 100%.
11. Deleted the 12-month requirement to transition to a higher tier based. Unnecessary bureaucracy.
12. Streamlined internal software to expedite both the interview and payment process.

### **Key Points in the 2005 Sign-up Notice**

- An annual enhancement payment will be calculated at a variable payment rate with the rate initiating at 150% for the first contract year and then at a declining rate for the remainder of the contract. The FY-2005 sign-up variable rates for enhancements will be: 150% for 2005; 90% for 2006, 70% for 2007, 50% for 2008, 30% for 2009, 10% for 2010 and zero after 2010. This will allow contract capacity to add additional enhancements in the out-years.
- Annual enhancement payments will not exceed \$13,750 for Tier I, \$21,875 for Tier II, and \$28,125 for Tier III annually.

### **More details on One Contract per Participant**

Applicants can submit only one application for this sign-up. Participants in an existing CSP contract are not eligible to be an applicant or a participant on more than one contract. Therefore anyone receiving a payment from an existing CSP contract is not eligible to apply for this sign-up or to receive payment in the form of a share from any new contract resulting from this sign-up.

### **The CSP Application and Sign-up Process**

To apply for CSP, NRCS will ask potential participants to undergo a self-assessment process to determine if their operations can meet the standards of CSP and qualify for program participation. The self-assessment process is completed using a self screening questionnaire for each land use to be enrolled. Additionally, they must prepare a benchmark condition inventory to catalog their existing conservation treatment on the agricultural operation to document the operations resource condition on their operation. Once the producer has successfully met the eligibility requirements, completed the screening process and the benchmark inventory, and completed other sign-up requirements, they may submit an application and schedule an interview. Based on the resource inventory of benchmark conditions and a follow-up interview, NRCS will determine if the applicant is eligible for CSP, in which program tier the applicant

could participate and the enrollment category placement. Once funding decisions are made, all applicants will receive notification of their status.

**Environmental Performance, Evaluation and Accountability**

Environmental performance and actual field based outcomes have proven difficult for agencies to establish and report. Typically agencies report progress toward achieving environmental goals as outputs such as acres managed (for example resource management systems planned or applied on grazing lands), acres created (such as wetlands); or permits issued (for regulatory agencies). NRCS broke through the performance outcome barrier with its use of the soil conditioning index (SCI) during the 2004 CSP sign-up. The SCI estimates the amount of net carbon stored in the soil and the reduction in sediment leaving the land on an annual basis. The enhancement payment is based on the value of the outcomes rather than calculated on the paradigm for cost-share programs - the cost of implementing an activity. Additionally NRCS is in the process of developing performance-based indices similar to the Soil Conditioning Index for the major resource concerns along with a payment structure that corresponds with the environmental benefit produced. . NRCS seeks comment of this approach to enhancement payments as a basis for rewarding environmental performance.

The following table summarizes the provisions in each section of the amended interim final rule.

<b>Section</b>	<b>Title</b>	<b>Description</b>
<b>1469.1</b>	<b>Applicability</b>	Applicable to the 50 states, DC, US territories and islands. Provides authority for enrollment in calendar year 2004 and thereafter.
<b>1469.2</b>	<b>Administration</b>	Establishes supervision of CSP under the Chief, NRCS Provides general information on program administration
<b>1469.3</b>	<b>Definitions</b>	Defines numerous terms used in the rule. Most notably: <ul style="list-style-type: none"> <li>• Agricultural land—Cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced.</li> <li>• Agricultural operation—All agricultural land, and other lands determined by the Chief whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system and management that is substantially separate from any other. FSA farm boundaries may be used in determining an agricultural operation.</li> <li>• Benchmark condition inventory—The documentation of the resource condition or situation that NRCS uses to measure an applicant’s existing level of conservation</li> </ul>

Section	Title	Description
		<p>activities in order to determine program eligibility, to design a conservation stewardship contract, and measure the change in resource conditions resulting from conservation treatment.</p> <ul style="list-style-type: none"> <li>• Minimum level of treatment—The specific conservation treatment NRCS requires that addresses a resource concern, to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns.</li> </ul>
1469.4	<b>Significant resource concerns</b>	Designates soil quality and water quality as nationally significant resource concerns for all eligible land uses. Allows NRCS Chief to determine additional resource concerns of national significance.
1469.5	<b>Eligibility requirements for the applicant, for the land and the minimum conservation treatment</b>	<p>Requires an applicant to:</p> <ul style="list-style-type: none"> <li>• Only apply for one contract per sign-up.</li> <li>• Be in compliance with the highly erodible land and wetland conservation provisions.</li> <li>• Have control of the land for the life of the CSP contract (If the applicant cannot show control of a parcel for the life of the contract, that part of the agricultural operation does not qualify for any payment).</li> <li>• Share, or be entitled to share, in the crop or livestock available for marketing from the agricultural operation.</li> <li>• Complete a benchmark inventory for the entire agricultural operation or the portion being enrolled.</li> <li>• Supply necessary information to NRCS.</li> </ul> <p>Land enrolled in CSP must be:</p> <ul style="list-style-type: none"> <li>• Private agricultural land or other incidental land, as determined by NRCS (includes Tribal &amp; Indian trust or allotted land).</li> <li>• Other land (such as farmstead and barnyard production areas) that NRCS determines will contribute to improvement in an identified natural resource concern through conservation treatment.</li> <li>• Have the majority of the agricultural operation located within a selected priority watershed.</li> </ul> <p>Land not eligible for CSP enrollment:</p> <ul style="list-style-type: none"> <li>• Land enrolled in the Wetland Reserve Program, Grassland Reserve Program, and the Conservation Reserve Program</li> <li>• Public land</li> </ul> <p>Land not eligible for any CSP payment:</p> <ul style="list-style-type: none"> <li>• Land that is converted for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop</li> </ul>

Section	Title	Description
		<p>production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.</p> <p>Conservation requirements:</p> <ul style="list-style-type: none"> <li>• Tier I—Address the nationally significant resource concerns of soil quality and water quality to the minimum level of treatment on part of eligible land uses within the agricultural operation.</li> <li>• Tier II—Address nationally significant resource concerns of soil quality and water quality to the minimum level of treatment for all eligible land uses on the entire agricultural operation.</li> <li>• Tier III –Address all applicable resource concerns to the minimum level of treatment for all eligible land uses on the entire agricultural operation and have riparian zones adequately treated.</li> <li>• In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.</li> </ul>
1469.6	Enrollment criteria and selection process	<p>Enrollment Criteria:</p> <ul style="list-style-type: none"> <li>• Establishes a process for prioritizing watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other pertinent information.</li> <li>• Establishes enrollment categories and subcategories to identify, classify, and prioritize contracts for funding.</li> </ul> <p>Requires NRCS to publish, prior to each program signup, a notice of determinations made for the signup including:</p> <ul style="list-style-type: none"> <li>• Additional eligibility criteria,</li> <li>• Information on the priority order of enrollment categories and subcategories for funding contracts,</li> <li>• Estimates of the number of enrollment categories and contracts that will be funded,</li> <li>• Estimates of the total funds expected to be obligated.</li> </ul> <p>Selection Process</p> <ul style="list-style-type: none"> <li>• Enrollment categories and subcategories will be funded in order until available funds specified in the CSP signup announcement are exhausted.</li> </ul>

<b>Section</b>	<b>Title</b>	<b>Description</b>
<b>1469.7</b>	<b>Benchmark condition inventory and conservation stewardship plan</b>	Establishes requirements for a benchmark condition inventory and a CSP plan. Requires all conservation practices to meet FOTG standards.
<b>1469.8</b>	<b>Conservation practices and activities</b>	Requires NRCS to determine which structural, and land management practices and activities are eligible for CSP payment and to make the list available to the public Prohibits practice payments for practices applied prior to application for the program. Allows for approval of interim conservation practice standards and job sheets and financial assistance for pilot work to evaluate and assess the performance, efficacy and effectiveness of the technology or conservation practices or activities.
<b>1469.9</b>	<b>Technical assistance</b>	Provides for the use of approved or certified Technical Service Providers in implementing CSP
<b>1469.20</b>	<b>Application for contracts</b>	Provides a listing of contents of a CSP application. Provides the requirements for CSP applications, including a benchmark condition inventory and a completed self-assessment workbook. Requires that producers can only submit one application per signup and have only one active contract at any one time.
<b>1469.21</b>	<b>Contract requirements</b>	Establishes requirements for CSP contracts including: <ul style="list-style-type: none"> <li>• Contract duration</li> <li>• Practices to be maintained and implemented</li> <li>• Payment schedule</li> </ul> Establishes that program participants will only receive payments from one conservation security contract per agricultural operation. Establishes the expiration date of contracts as September 30 in the last year of the contract. Establishes that contract holders must complete all conservation stewardship plan and conservation stewardship contract planned items during the times specified in the plan or contract. Allows participants who may modify their contract to change their tier of participation under a CSP contract once the treatment determined necessary by NRCS to meet the higher tier level has been established.
<b>1469.22</b>	<b>Conservation practice operation and maintenance</b>	Specifies that participants must operate and maintain the conservation practice(s) for the life span of the practice(s) or refund any of the cost-share, maintenance, or enhancement payments made under the contract Specifies that NRCS may periodically inspect the conservation practices during the lifespan of the practice.

Section	Title	Description
1469.23	Program payments	<p>Specifies how the various CSP payments will be determined:</p> <ul style="list-style-type: none"> <li>• <b>Stewardship</b> payment is the product of: the number of acres in each eligible land use category (not including “other”); its corresponding stewardship rate; a tier specific percentage (Tier specific percentages are: 5%--Tier I; 10%--Tier II; and 15%--Tier III); and a tier specific reduction factor (0.25--Tier I; 0.50 Tier II and 0.75 Tier III). Annual stewardship payments cannot exceed \$5,000 for tier I, \$10,500 for tier II and \$13,500 for tier III.</li> <li>• <b>Existing Practice</b> A participant may be paid a percentage of the average 2001 county cost of maintaining a land management and structural practice that is documented in the benchmark condition inventory. An alternative payment method such as a percentage of the stewardship payment may be used so long as the payment will not exceed 75 percent (or in the case of a beginning farmer or rancher 90 percent) of the average 2001 county costs of installing the practice. NRCS will use 25% in 2005.</li> <li>• <b>New Practice</b> payments may be up to 50 percent (65% for a beginning or limited resource producer) of the average county costs of installing the practice in the 2001 crop year for new conservation practices.</li> <li>• <b>Enhancement</b> payments may be provided if the CSP’s activities will increase conservation performance as a result of additional effort made by the producer that: improves a resource concern to a condition that exceeds the minimum eligibility requirements for the participants tier of participation or for other actions as listed in the authorizing legislation. (State Conservationists, with advice from the State technical Committee, will develop the list of enhancements and payment amounts for each activity and post.)</li> <li>• Establishes annual contract limits for CSP as: \$20,000 for Tier I, \$35,000 for Tier II, and \$45,000 for Tier III</li> <li>• Establishes ability for Chief to limit enhancement payments. The annual contract limits for 2005 enhancements will be: \$13,750 for Tier I, \$21,875 for Tier II, and \$28,125 for Tier III</li> <li>• Establishes ability for Chief to set a variable payment rate for the enhancement included in the</li> </ul>

<b>Section</b>	<b>Title</b>	<b>Description</b>
		<p>initial contract year. The variable rates for enhancements will be: 150% for 2005; 90% for 2006, 70% for 2007, 50% for 2008, 30% for 2009, 10% for 2010 and zero after 2011.</p> <ul style="list-style-type: none"> <li>All enhancements added after the initial year will be paid at a set rate of 100%.</li> </ul>
<b>1469.24</b>	<b>Contract modifications, renewals, and transfers of land</b>	<p>Establishes the requirements for participants to modify contracts including changing their tier of participation or extending their contract. Allows transfer of contracts if all parties agree</p>
<b>1469.25</b>	<b>Contract violations and termination</b>	<p>Gives participants a reasonable time to correct contract violations before contract termination. Provides that participants must forfeit all rights for future payments and refund all or part of the payments received plus interest if their contract is terminated</p>
<b>1469.30</b>	<b>Fair treatment of tenants and sharecroppers</b>	<p>Requires CSP payments to be divided among tenants and sharecroppers in a manner deemed equitable. NRCS may refuse to enter into a contract when there is disagreement among the tenant and landowner regarding distribution of payments.</p>
<b>1469.31</b>	<b>Appeals</b>	<p>Establishes the administrative review process for participants receiving an adverse decision. The administrative appeal process must be exhausted before any judicial action is taken Provides a listing of decisions that cannot be appealed</p>
<b>1469.32</b>	<b>Compliance with regulatory measures</b>	<p>Assigns CSP participants the responsibility for obtaining the authorities, permits, easements or other approvals necessary for implementation and operation of conservation practices.</p>
<b>1469.33</b>	<b>Access to agricultural operation</b>	<p>Provides that any authorized NRCS representative has the right to enter an operating unit for the purposes of verifying compliance with the CSP contract</p>
<b>1469.34</b>	<b>Performance based on advice or action of NRCS representative</b>	<p>Grants relief to CSP participants when advice of any authorized representative of the CCC was erroneous</p>
<b>1469.35</b>	<b>Offsets and assignments</b>	<p>Allows participants to assign payments to others</p>
<b>1469.36</b>	<b>Misrepresentation and scheme or device</b>	<p>Requires a producer who knowingly misrepresents any fact affecting a CSP determination to refund all payments plus interest received on all CSP contracts.</p>

## **OTHER POINTS**

### **Limited Resource and Beginning Farmers and Ranchers.**

NRCS is committed to making CSP accessible to all working lands and the agricultural producers who are actively involved in day to day conservation decisions, including limited resource and beginning farmers and ranchers. NRCS believes that this goal can and should be fully consistent with a commitment to produce the greatest net benefits with the program. Options that include adding specific enrollment categories and the adjustment of cost-share rates for limited resource producers and beginning farmers and ranchers are included in this rule.

**Technical Service Providers.**

Section 1469.9 Technical Assistance -- describes tasks needed for program activities, including: (1) conduct the sign-up and application process; (2) conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (3) training, certification, and quality assurance of professional conservationists; and (4) evaluation and assessment of the producer's operation and maintenance needs. NRCS is proposing that, consistent with NRCS's planning procedures policy, that Conservation Security Plans will be completed by certified conservation planners. This description is consistent with technical assistance requirements for other NRCS programs. NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers.

**For More Information.**

If you need more information about CSP, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information is also available on the World Wide Web at:

<http://www.nrcs.usda.gov/programs/csp/index.html> under "Additional Information".