

**AMENDED
CIVIL RIGHTS IMPACT ANALYSIS
FOR THE PROPOSED RULE:
CONSERVATION SECURITY PROGRAM**

Agency: US Department of Agriculture
Natural Resources Conservation Service
Conservation Operations Division

Subject: Civil Rights Impact Analysis
Conservation Security Program Proposed Rule

A review of the proposed rule, Conservation Security Program (CSP), has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture". The review reveals factors indicating disproportionate adverse civil rights impacts for Natural Resources Conservation Service (NRCS) producers who are limited resource producers, beginning farmers, socially disadvantaged farmers, minorities, women, or persons with disabilities.

I. Civil Rights Impact Analysis

The CRIA is directed towards the identification of actual or potential civil rights issues. The purpose is to identify all the various adverse implications the proposed CSP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review examined (a) the rule and its implementation plan, (b) historical participation data, (c) public communication and outreach efforts, and (d) barrier removal provisions incorporated into the new rule. The examination sought to determine:

- if all the affected groups are provided the same opportunities to participate in the decision-making or rulemaking process for CSP,
- if all the affected groups have historically been provided the same opportunities to participate in NRCS programs, and
- if all the affected groups are provided the same information to decide if they wish to participate in the CSP.

A. Conservation Security Program Rule and Implementation Plan

Description of the CSP

Congress has recognized the importance of assisting agricultural producers who practice good stewardship on their agricultural lands in the Farm Security and Rural Investment Act of 2002 by authorizing the Secretary to establish the Conservation Security Program (CSP). Title II, Subtitle A, Section 2001, of the 2002 Act establishes the Conservation Security Program (CSP). This rule sets forth the policy for the Natural Resources Conservation Service (NRCS), agent of the Credit Commodity Corporation (CCC), to provide program and technical assistance to eligible participants to implement this program.

The CSP is a voluntary program that provides financial and technical assistance to promote the conservation, protection, and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working agricultural lands. Agricultural producers are longtime stewards of America's lands and the CSP supports this ongoing stewardship by providing incentive payments for producers to maintain and enhance conservation practices at a non-degradation level. The CSP also rewards producers who go beyond the minimum requirements of the program by addressing additional resource concerns.

Conservation Security Program (CSP) Proposed Rule

The CSP is available in all 50 states, the Caribbean Area, and the Pacific Basin, and is a voluntary program. Owners and individuals, who are eligible for the CSP, must share in the risk of producing any crop or livestock and must be entitled to share in the crop or livestock available for marketing from the agricultural operation (or would have shared had the crop or livestock been produced).

The CSP provides stewardship incentives in the form of base payments, conservation practice cost-share and maintenance payments, and enhancement payments as described below:

- Three levels of base payments

Tier I	Existing conservation practices and treatments must address at least one significant natural resource concern to a non-degradation level on part of the agricultural operation.
Tier II	Existing conservation practices and treatments must treat at least one significant natural resource concern for each land use to a non-degradation level and involves the entire agricultural operation.
Tier III	Existing conservation practices and treatments must treat <u>all</u> natural resource concerns to a non-degradation level and must involve the entire agricultural operation.

- Conservation practice installation and maintenance cost-share payments. Payments for conservation practice installation and maintenance will be determined using costs and cost share rates approved by the State Conservationist. Existing conservation practices that are part of a CSP Tier Contract are eligible for maintenance cost share payments and planned practices that are part of a CSP Tier Contract modification are eligible for installation cost share payments.

- **Conservation Practice and Maintenance Costs Lists** – Cost lists using 2001 crop-year average cost information that includes the cost of installation and average annual maintenance costs of conservation practices are to be established for each county or parish. The Local Work Group may advise the District Conservationist in establishing average cost lists. Only National or Interim practices contained in the Field Office Technical Guide, Section IV are to be included. Costs are to be established according to the nationally recognized units for the practice.

To the extent practicable, FY 2001 EQIP costs will be used in determining CSP practice installation and maintenance costs.

Cost lists are to be submitted to the State Conservationist for approval.

- **Cost Share Rates** – The State Conservationist, with advice from the State Technical Committee, will determine the conservation practice installation and maintenance cost share rates. The maximum direct program share of cost-share payments to a participant shall not exceed:
 - 75 percent of the total cost of the FY 2001 conservation practice installation and maintenance cost.
 - 90 percent of the total cost of the FY 2001 conservation practice installation and maintenance cost for limited resource farmers and new or beginning ranchers and farmers.
 - Maximum payment limitations , and

- Enhancement payments to reward producers who go beyond the minimum requirements of the program to address additional resource concerns. Producers may be eligible to receive enhancement payments for the following:
 1. Implementing or maintaining multiple conservation practices that exceed current Tier requirements.
 2. Addressing local conservation priorities in addition to resource concerns for the agricultural operation.
 3. Participating in an on-farm conservation research, demonstration, or pilot project.
 4. Participating in a watershed or regional resource conservation plan that involves at least 75 percent of the agricultural producers in the plan area.
 5. Assisting in assessment and evaluation of conservation practices included in the CSP plan.

Encouraging participants to adopt a higher level of conservation practices in order to receive enhancement payments may, in fact serve as a deterrent to new and limited resource farmers.

CSP Provisions

The proposed rule covers the provisions, contracting and administration of the CSP. It also sets forth the terms and conditions under which individuals may participate in the program. Interested producers may apply to enroll in CSP throughout the year.

Applicants must first complete a CSP worksheet to indicate their intention to enroll in the program. The CSP worksheet may be submitted in person, by phone, e-mail, Internet "eCommerce", or fax or letter, to the local NRCS, FSA or conservation district office. CSP worksheets are available in NRCS field offices, FSA county offices and conservation district offices, as well as an automated application format on the Internet.

State Conservationists shall ensure that persons providing application assistance are adequately trained and equipped to give applicants effective, fair, and accurate assistance and information. Any person who receives applications on behalf of NRCS must abide by Federal requirements regarding nondiscrimination.

Within one week of receiving the application, the CSP applicant will be contacted to schedule an interview to conduct a resource inventory and develop the CSP assessment. The purpose of the inventory is to describe and document the benchmark condition of the property to be enrolled. The resource inventory will include the producer's objectives, land uses, acres, resource concerns, and conservation practices applied, along with any other information needed for contract development. Information may also be obtained from existing conservation plans, existing conservation program contracts, and CSP worksheet. This inventory information is critical to making informed assessment of the current level of conservation treatment and determining CSP payments.

This resource inventory may be completed by NRCS staff or an approved technical service provider.

Agency Impact

Implementation of the CSP will affect USDA as outlined below.

At the national level, NRCS will:

- Provide overall program administration and implementation;
- Establish program regulations, policy, and guidance;
- Establish a continuous sign-up;
- Establish national priorities in consultation with other national partners;
- Distribute funds to the states; and
- Establish the Federal share of cost-share payments.

At the state level, NRCS will:

- Conduct information and outreach;
- Determine eligible practices, in consultation with the State Technical Committee, using a locally led process;
- Develop funding allocations with advice from State Technical Committee;
- Establish a continuous signup, in consultation with the State Technical Committee; and
- Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

At the local level, NRCS will:

- Conduct information and outreach;
- Accept applications;
- Make applicant and land eligibility determinations;
- Provide technical assistance for conservation planning and implementation;
- Develop contract agreements;
- Approve contract payments;
- Perform status reviews and follow-up on agreements; and
- Perform evaluations.

At the state level, FSA will:

- Participate in the State Technical Committee, and the USDA Local Work Groups;
- Provide program acreage as needed; and
- Assist in information and outreach.

At the local level, FSA will:

- Make program payments;
- Process CSP contract and cost share payments;
- Administer CSP contract payment limitations;
- Provide program acreage as needed; and
- Document crop history.

Producer Impact

Producers interested in participating in the Conservation Security Program must:

- Volunteer to participate in the program;
- Submit an application for participation; and
- At a minimum address one significant natural resource concern to a non-degradation level on part of the agricultural operation, and at a maximum must treat all natural resource concerns to a non-degradation level on the entire agricultural operation.

Producer Eligibility Criteria

An eligible producer is an owner, operator, landlord, tenant, or sharecropper, including corporations, trusts, partnerships, and estates who:

- Share in the risk of producing any crop or livestock; and
- Are entitled to share in the crop or livestock available for marketing from the agricultural operation (or would have shared had the crop or livestock been produced).

Land Eligibility Criteria

The land must:

- Be private agricultural land;
- Not be enrolled in CRP, WRP, or GRP; and
- Be cropped for four of the last six years.

Sign-up Period and Contract Determinations

Any producer may submit an application for participation in the CSP at any NRCS Field Office or USDA Service Center. Information will be provided that explains the process to request assistance. Applications will be accepted throughout the year.

The State Conservationist, in consultation with the State Technical Committee, will:

- Develop ranking criteria and a ranking process to prioritize eligible applications, taking into account local and state priorities; and
- Rank and select applications for funding based on the state-developed criteria and selection process.

The local designated conservationist will:

- Work with the applicant to collect information necessary to evaluate the application, using the criteria developed;
- Obtain the ranked applications from the State Conservationist and work with the applicant to develop a contract agreement.

Civil Rights Impact Determinations

Our review focused on whether the proposed rule will have actual or potential adverse civil rights impacts on limited resource farmers, minorities, women, and persons with disabilities if implemented. In this regard, our review sought to identify all civil rights issues related to the rule, including any adverse impact on current or future producers who are limited resource farmers, women, minorities, or persons with disabilities. In conducting our review, we relied on the information included in the rule, the cost-benefit analysis and an analysis of collected data.

B. Program Participation Data

Program Participation Data

NRCS engages in data collection to analyze the actual or potential impacts its programs may have on members of protected groups. Conclusions drawn from the analyses enable program managers to provide targeted outreach efforts in an attempt to mitigate any adverse impacts of a proposed rule. The NRCS program participation data for minorities and women producers is collected under the NRCS Performance and Results Measurement System (PRMS).

Table 1 compares 1997 Agriculture Census data identifying the number of eligible agricultural producers in the United States and U.S. Territories to the number of producers actually receiving services from NRCS. The Agriculture Census data identifies the number of women and minorities that are potentially affected by the CSP rule.

Table 2 shows the number of applicants by RSNOD (Race, Sex, National Origin, and Disability) for NRCS conservation programs providing cost share, the number and percentage of applicants approved for cost share, and the amount and percentage of cost share dollars received by applicants. Data for participation and cost share dollars received by persons with disabilities was not available for FY 2002.

Table 1: FY 2002 PRMS Parity Report by Demographics***

Race	American Indian	Asian/Pacific Islander	Black	Hispanic	White	Females	Total
Census (#)	10,629	8,674	18,435	27,360	1,862,782	164,883	1,900,520
Service (%)	2,288 (22%)	871 (10%)	3,564 (19%)	5,026 (18%)	311,305 (17%)	43,436 (26%)	323,526 (17%)
Disparity	N/A	N/A	N/A	N/A	N/A	N/A	

*** PRMS Parity Report, October 1 through September 30, FY 2002

Table 1 shows there are over 1,900,500 producers eligible to participate in NRCS conservation programs and are therefore potentially affected by CSP. In FY 2002, with the exception of Asian American/Pacific Islander producers; females and minorities received services from NRCS at rates equal to or exceeding the rate of service provided to White males. The fourth row shows that there is no disparity in the services rendered by NRCS to White males as compared to females and minorities. Parity is achieved when services are provided by NRCS to a protected group at a rate of 10 percent or less of the rate of services provided to White males.

**Table 2: Minority, Women, and Persons with Disabilities
Participation in NRCS Conservation Programs for FY 2002****

	#	#	%		%	%
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Group Representation	Applicants	Applicants Approved	Applicant Approved	Dollars Received	Dollars Received	Eligible Producers
American Indian	775	439	56.6	17,437,583	3.0	.70
Asian/Pacific Islander	217	77	35.5	1,969,604	.34	.26
African American	3406	2,879	84.5	3,374,545	.58	1.1
Hispanic	1160	579	49.9	7,154,981	1.2	1.6
Others	433	432	99.7	11,248,811	1.95	N/A
Females	13,582	7789	57.3	53,232,373	9.27	13.4
White Male	74,443	23,156	31.1	479,778,672	83.55	96.2
Disabilities	256	118	46.1	0	0	UNK
Total	94,272	35,469	37.6	574,196,569		

** PRMS Program Participation Report (All Programs), National Summary, October 1 through September 30, FY 2002

The data in Table 2 illustrate that in FY 2002, the rates of approvals for applications for cost share contracts from all protected groups exceeded the rate of approval for White male applicants. The last column of Table 2 shows the percentage of eligible producers by RSNO participating in NRCS programs (computed by dividing the number of producers serviced by NRCS in row two of Table 1 by the total number of producers receiving services from NRCS).

Only American Indian and Asian American/Pacific Islander producers received cost share dollars at rates exceeding their percentage of total eligible producers participating in NRCS programs (comparison of the last two columns in Table 2). The high percentage of cost share to American Indians is due to “recognized” tribal lands being designated by NRCS as environmental priority areas. Contracts for technical assistance on lands in priority areas are not competed against other funding requests and therefore receive 100 percent funding.

C. Outreach and Communication Strategy

Outreach

The NRCS Director of Communications, the Environmental Justice Coordinator and the Director of Outreach will provide and coordinate training regarding outreach strategies necessary to inform all segments of the affected public about the proposed CSP rule. Public notification and outreach will be aggressively expanded to include news releases, radio and TV spots, publications, and brochures to ensure those traditionally under-served will have an equal opportunity to benefit from the proposed rule.

The Conservation Operations Division (COD) of NRCS will work in partnership with the USDA Office of Outreach and the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed CSP rule will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained or are being created to reach fifty-two Land-Grant Universities, seventeen 1890 Land-Grant Universities, 192 HACU colleges and universities located in 6 U.S. Territories, and 32 Tribal Colleges and Universities. COD will submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women’s Agricultural Network),

MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgrAbility Project (approximately 22,000-30,000 farmers with disabilities receive the Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint underserved producers with the newly proposed CSP rule. Spanish-translated press release and informational materials will be made available.

Encouraging Community Involvement and Locally Led Conservation

Local offices will continue to encourage community involvement and locally led conservation activities they have underway. Locally led conservation is helping community stakeholders to:

- Assess their natural resource conservation needs;
- Set community conservation goals;
- Develop an action plan;
- Obtain resources to carry out the plan;
- Implement solutions; and
- Measure their success.

The locally led process provides for input from a broad range of agencies, organizations, businesses, and individuals in the local area who have an interest in natural resource management and are familiar with the local resource needs and conditions. Through this input process there is the opportunity for minority and socially disadvantaged groups to indicate how to address their natural resource concerns. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

D. Barrier Removal Provisions of CSP Rule

The proposed rule incorporates features to address potential disparities for producers who are members of a protected group. The proposed rule will allow for incentive payments to be made for three tiers of conservation. Conservation incentive payments generally allow for a fair distribution of benefits among agricultural producers across the nation than do other farm programs such as commodity subsidies because of:

- Payment limitations; and
- Most agricultural producers will be eligible to participate in this program.

The proposed rule should address major systemic barriers for farm operators who have historically experienced distinct disadvantages in obtaining USDA program assistance by assisting agricultural producers who exhibit good stewardship by providing incentive payments and higher percentage of cost-share payments to participate. To ensure these agricultural producers will have an equal opportunity to participate, beginning agricultural producers and limited resource farmers will be eligible for up to 90 percent of the cost of conservation practices and maintenance as compared to 75 percent for other agricultural producers.

Beginning Farmer or Rancher Definition:

An **individual** or **entity** who:

- a. Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity,
- b. Will materially and substantially participate in the operation of the farm or ranch.
 1. In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located
 2. In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Limited Resource Farmer or Rancher or Forest Owner Definition:

1. A person with direct or indirect gross farm sales not more than \$100,000 in each of the previous two years.*1
AND
2. A person with a total household income at or below the national poverty level for a family of four or less than 50 percent of county median household income in each of the previous two years.*2

*1 This value will be increased beginning in fiscal year 2004 to adjust for inflation using the "Prices Paid by Farmer Index" compiled by **NASS**.

*2 Total household income will be determined annually and indexed for inflation using Commerce Department Data.

Socially Disadvantaged Group Definition:

A group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

Socially Disadvantaged Farmer or Rancher Definition:

A farmer or rancher who is a member of a socially disadvantaged group.

The NRCS taskforce established to collaborate in the creation and implementation of the proposed CSP rule and other conservation programs emanating from the 2002 Farm Bill consists of staff members from the Civil Rights Division, the Conservation Operations Division, the Outreach Division and members from various State and Field offices. The taskforce membership is comprised of four White males, two White females, one Asian American male, and one Hispanic male. When the proposed rule is published, all populations will be provided the opportunity to comment on the rule as

proposed, and on the implementation of the rule. Outreach and communication strategies will be in place to ensure all producers are provided the same information to decide if they wish to participate in CSP; and, the rule will provide benefits to all producers regardless of their status as it relates to race, national origin, gender or disability.

E. Conclusion

Therefore, our review of the proposed rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. When the proposed rule is published, all populations will be provided the opportunity to comment on the rule as proposed, and on the implementation of the rule. The data presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. CSP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status.

II. Certification

I certify that the following review and analysis has been conducted in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and Departmental Regulation 1512-1, "Regulatory Decision-Making Requirements."

Andrew Johnson, Jr., Director
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Date: