

**Conservation Security Program  
Summary of Interim Final Rule  
June 9, 2004**

The Natural Resources Conservation Service (NRCS) is issuing an 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 interim final rule 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 interim final rule also addresses public comments that NRCS solicited in a proposed rulemaking published January 4, 2004, in the Federal Register and other comments NRCS received in public listening sessions.

Comments must be received within 90 days after 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 non-cropped areas that are an incidental part of the agriculture operation.

**Key Elements of the Proposed Rule**

Definitions – major changes

- *Agricultural operation* – the interim final rule revised the definition of agricultural operation to mean “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.” Additionally Section 1469.5 allows producers to delineate their agricultural operation. This approach will allow producers whose land is not included in the farm program system to delineate their agricultural operation while allowing those applicants who use the FSA farm system to delineate as a minimum one farm and allowing applicants to aggregate farms, if desired, into a single contract as long as they meet the definition

within this interim final rule. In order to avoid a multitude of similar contracts with common conservation management, NRCS will limit each applicant to only one application per sign-up and one active CSP contract. This will minimize farm reconstitutions, provide flexibility to the applicants, and allow for a delineation of agricultural operation that is consistent with other NRCS programs. Participants will be allowed to add or subtract land from their contract.

- *At-risk species* - NRCS has reconsidered the issue, and has deleted the term from the rule and substituted appropriate language regarding “important wildlife and fisheries habitat” in Section 1469.6 (a) and (b) to achieve the same result but avoid confusion with other federal regulation definitions.
- *Forest land* - Linear forestland practices, such as riparian forest buffers are now included as incidental land. Land with the agroforestry practices of strip cropping, alley cropping and silvopasture practices have been added to the definition of agricultural land.
- *Incidental Forest land* - includes all non-linear forested riparian areas and associated small wood lots and small adjacent areas located within the boundaries of the agricultural operation that are managed to maximize wildlife habitat values. Stewardship payment for incidental forest land will be the same as the adjacent benefiting land.
- *Pastured cropland* - Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Stewardship payment for pastured cropland will be the same as cropland.

#### Stewardship (base) payment reduction factor

- The Act requires base payments of CSP to be based on 2001 national rental rates by land use category or “*another appropriate rate that ensures regional equity*” (emphasis added). NRCS proposes using regional and local land rental data for FY2001 with adjustments to ensure consistency and regional equity. In addition, NRCS proposed to apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments (for all tiers of participation).
- The limitation in the interim final rule concerning stewardship (base) payments is different from that set forth in the proposed rule. The proposed rule provided that the base payments, now termed “stewardship payments”, for all three tiers would be reduced by applying a 0.1 reduction factor. In the interim final rule, the stewardship rate for Tier I is reduced to 0.25, the stewardship rate for Tier II is reduced to 0.50, and the stewardship rate for Tier III is reduced to 0.75. We chose these percentages for two reasons. First, this will provide incentives for producers to move to a higher Tier which provides significantly greater environmental benefits. Second, the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate with the payment scheme.

#### Existing practice payment calculation

- NRCS is reviewing a process during the FY 2004 sign-up to allow the existing practice payments to be calculated as a percentage of the stewardship payment, allowing for paperwork reduction burden for producers and administrative efficiency for the agency.

#### New practice payment limits

- The cost-share rate for new practice payments is set at no more than 50 percent of the average county costs. [MI](#) State Conservationists will have an opportunity to tailor practices offered to meet the needs of local conditions.

#### Contract Limitations

- NRCS will limit each applicant to only one application per sign-up and one active CSP contract.
- NRCS is providing that the total CSP contract payment (combination of the stewardship, existing practice and enhancement payments) not exceed the following percentage of the stewardship payment rate (the amount prior to application of the reduction factor) for the applicable Tier level: 15 percent for Tier I, 25 percent for Tier II and 40 percent for Tier III. The new practice payment will be exempt from this limitation and will be excluded from the computation of the limitation. As NRCS was developing the CSP stewardship payment provisions, research of the history of the establishment of similar rental payments for the CRP indicated that producers were concerned about the potential effects of the CSP rental payments levels on the land prices and rental values. Therefore, to avoid possible distortions in those prices and values, NRCS is implementing this contract limit.

#### Land eligibility requirements

- Eligible land is defined as all private agricultural land, including incidental forested land, excluding land that is under a CRP, WRP, or GRP contract, or that has not been planted or considered to be planted in the last 4 of the 6 years preceding the enactment of the 2002 Farm Bill.
- The interim final rule language is further clarified to assure public land owned by federal, state or local units of government is excluded within the CSP; otherwise, funds appropriated for CSP to be used on private and Tribal working lands would be supplementing the budgets of Federal, State, or local agencies whose responsibility it is to manage those lands or hold accountable those people who manage those lands for them.

#### Minimum level of conservation treatment

- To ensure that CSP participants have a demonstrated commitment to conservation, NRCS is proposing to require CSP applicants to address specified resource concerns, (such as soil quality and water quality), for tier I and tier II levels, prior to program enrollment. NRCS estimates that requiring existing conservation stewardship will increase the environmental benefits generated by the program.
- NRCS made the minimum requirements for soil quality and water quality more specific. For implementation of CSP on cropland, the soil quality minimum

requirement is now defined as a Soil Conditioning Index (SCI) value of 0.0 or greater, and the water quality minimum requirement is defined as meeting the quality criteria in the NRCS Field Office Technical Guide for nutrients, pesticides, salinity, and sediment for surface waters and nutrients, pesticides, and salinity for groundwater.

- Achievement of soil and water quality criteria on rangelands and pasture is based on the management of plant communities through control of grazing animals. These issues are adequately addressed through grazing management and managing livestock access to water courses through a properly applied grazing management plan. Adequate vegetation cover provides soil and water quality benefits, such as maintaining filtering capacity, infiltration rates, organic matter content, and is achieved by controlling grazing animals to minimize livestock concentration, and trailing and trampling, and enhancing nutrient distribution. Controlled rotational grazing ensures the appropriate kind and number of animals is balanced with the adequate amount of available forage and meets the need of the plants.

#### Enrollment criteria and selection process

- NRCS will conduct periodic sign-ups in selected priority watersheds (using eight-digit hydrologic unit codes developed by the U.S. Geological Survey). Only producers located within those watersheds will be eligible for a given sign-up. A majority of the agricultural operation must reside in the selected watershed. The eligible watersheds will be announced and identified prior to CSP sign-up.
- Two key considerations provide the basis of a watershed focus to the CSP program. The first is to ensure that CSP's limited resources are focused first on the most achievable environmental performance areas. The second is management constraints based on the statutory limit on technical assistance. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the funds expended in a fiscal year. NRCS expects that a large number of producers will seek participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus, the statutory cap on technical assistance of 15 percent becomes a primary limiting factor for implementing CSP.
- The interim final rule includes a process to select the priority watersheds. Specific enrollment categories and sub-categories for identifying, classifying, and prioritizing contracts to be funded will be announced in the sign-up notice.
- All applications which meet the sign-up criteria will be placed in an enrollment category regardless of available funding. An application will be placed in the highest priority enrollment category or sub-category for which the application qualifies. Categories will be funded in priority order until the available funds are exhausted.

#### The Interim final 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 of 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. Based on the resource inventory of benchmark conditions and a follow-up interview, NRCS will determine in which program tier the applicant could participate and the enrollment category placement.

### **Environmental Performance, Evaluation and Accountability**

In its pursuit of targeting the greatest resource benefits in a cost-effective manner, NRCS will endeavor to use CSP as an opportunity to learn more about the benefits and costs that derive from conservation practices. Careful accounting for and tracking of CSP enrolled acres will help to demonstrate the environmental performance achieved through the program. The first order of benefits is provided as stewards maintain enrolled acres to the stringent CSP non-degradation standard, which they met in order to qualify for the program. These acres reflect a sustained stream of environmental benefits and the first increment of environmental benefit. Acres enhanced beyond non-degradation, through management intensity that amplifies conservation benefits, provides a second increment of environmental performance. Quantifying the natural resource and environmental improvements delivered will be achieved at micro and macro scales over time. At the field level, environmental performance will be documented directly using indices that directly measure environmental performance such as increases in soil quality and improvements in water management. Additionally, data observed and documented through the producer-based studies and evaluation and assessment components of CSP will document field level performance. At larger scales, natural resource inventory, ongoing conservation system physical effects documentation, and modeling methods will form the basis for quantifying CSP environmental performance.

### **OTHER POINTS**

#### **Limited Resource Producers.**

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 for limited resource producers are presented in the preamble of the interim final rule.

#### **Technical Service Providers.**

Section 1470.9 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 additional 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>.

The following table summarizes the provisions in each section of the 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 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. USDA 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</li> </ul>

Section	Title	Description
		<p>level of conservation 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>	<p>Designates soil and water quality as nationally significant resource concerns for all land uses. Allows NRCS Chief to determine additional resource concerns of national significance for each signup.</p>
1469.5	<b>Eligibility requirements</b>	<p>Requires an applicant to:</p> <ul style="list-style-type: none"> <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 component).</li> <li>• Complete a benchmark inventory for the entire agricultural operation or the portion being enrolled.</li> <li>• Share, or be entitled to share, in the crop or livestock available for marketing from the agricultural operation.</li> <li>• Have the majority of the agricultural operation located within a selected priority watershed.</li> <li>• Supply necessary information to NRCS.</li> <li>• Meet specific Tier requirements including: <ul style="list-style-type: none"> <li>• Tier I—Address the nationally significant resource concerns of water and soil quality to the minimum level of treatment on part of their agricultural operation.</li> <li>• Tier II—Address nationally significant resource concerns of water and soil quality to the minimum level of treatment on the entire agricultural operation.</li> <li>• Tier III –Address all applicable resource concerns to the minimum level of treatment on the entire agricultural operation.</li> </ul> </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>• Devoted to crop production, if converted to cropland after May 13, 2002, for at least four of the</li> </ul>

Section	Title	Description
		<p>six years preceding May 13, 2002.</p> <ul style="list-style-type: none"> <li>• Other land that NRCS determines will contribute to improvement in an identified natural resource concern through conservation treatment.</li> </ul>
<b>1469.6</b>	<b>Enrollment criteria and selection process</b>	<p>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. Establishes enrollment categories and subcategories to identify, classify and prioritize contracts for funding. Enrollment categories and subcategories will be funded in order until available funds specified in the CSP sign-up announcement are exhausted. 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>Provides the requirements for CSP applications, including a benchmark condition inventory and a complete self-assessment workbook.</p>
<b>1469.7</b>	<b>Benchmark condition inventory and conservation stewardship plan</b>	<p>Establishes requirements for a benchmark condition inventory and a CSP plan. Requires all conservation practices to meet FOTG standards.</p>
<b>1469.8</b>	<b>Conservation practices and activities</b>	<p>Requires NRCS to determine which structural, and land management practices and activities are eligible for CSP payment and to make a list of such practices 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 financial assistance for pilot work to evaluate and assess the performance, efficacy and effectiveness of the technology or conservation practices.</p>
<b>1469.9</b>	<b>Technical assistance</b>	<p>Provides for the use of approved or certified Technical Service Providers in implementing CSP.</p>
<b>1469.20</b>	<b>Application for contracts</b>	<p>Provides a listing of contents of a CSP application. Requires that producers can only submit one application per signup and have only one active contract at any one time.</p>
<b>1469.21</b>	<b>Contract requirements</b>	<p>Establishes requirements for CSP contracts including:</p> <ul style="list-style-type: none"> <li>• Contract duration</li> </ul>

Section	Title	Description
		<ul style="list-style-type: none"> <li>• Practices to be maintained and implemented</li> <li>• Payment schedule</li> </ul> <p>Establishes the expiration date of contracts as September 30 in the last year of the contract.</p> <p>Establishes that program participants will only receive payments from one conservation security contract per agricultural operation.</p> <p>Requires CSP participants to address the following additional resource concerns to the minimum level of treatment by the <b>end of the contract</b>.</p> <ul style="list-style-type: none"> <li>• Tier I—additional requirements announced in the enrollment categories or sign-up announcement over the contract acreage (unless stipulated that they must be in place at the time of application).</li> <li>• Tier II—A locally significant resource concern, other than the nationally significant resource concerns, over the entire operation.</li> <li>• Tier III—Additional requirements in the enrollment categories, as approved by NRCS, over the entire agricultural operation.</li> </ul> <p>Allows participants who may modify their contract to change their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 12 months.</p>
1469.22	<b>Conservation practice operation and maintenance</b>	<p>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, existing practice, or enhancement payments made under the contract.</p> <p>Specifies that NRCS may periodically inspect the conservation practices during the lifespan of the practice.</p>
1469.23	<b>Program payments</b>	<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 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</li> </ul>

Section	Title	Description
		<p>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).</p> <ul style="list-style-type: none"> <li>• <b>New Practice</b> payments may be up to 50 percent 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 payment amounts for each activity.)</li> <li>• The total of the stewardship, existing and enhancement payment cannot exceed the following percentage of the unadjusted stewardship payment: <ul style="list-style-type: none"> <li>15 percent for Tier I</li> <li>25 Percent for Tier II</li> <li>40 percent for Tier III</li> </ul> </li> <li>• Establishes annual dollar limits for contracts as: <ul style="list-style-type: none"> <li>\$20,000 for tier I,</li> <li>\$35,000 for tier II and</li> <li>\$45,000 for tier III</li> </ul> </li> </ul>
1469.24	<b>Contract modifications and transfers of land</b>	<p>Establishes the requirements for participants to modify contracts including changing their tier of participation or extending their contract.</p> <p>Allows transfer of contracts if all parties agree.</p>
1469.25	<b>Contract violations and termination</b>	<p>Gives participants a reasonable time to correct contract violations before contract termination.</p> <p>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>
1469.30	<b>Fair treatment of tenants and sharecroppers</b>	<p>Requires CSP payments to be divided among tenants and sharecroppers in a manner deemed equitable.</p> <p>NRCS may refuse to enter into a contract when there is disagreement among the tenant and landowner regarding distribution of payments.</p>
1469.31	<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.</p> <p>Provides a listing of decisions that cannot be appealed</p>
1469.32	<b>Compliance with regulatory measures</b>	<p>Assigns CSP participants the responsibility for obtaining the authorities, permits, easements or other</p>

<b>Section</b>	<b>Title</b>	<b>Description</b>
		approvals necessary for implementation and operation of conservation practices.
<b>1469.33</b>	<b>Access to agricultural operation</b>	Provides that any authorized NRCS representative has the right to enter an operating unit for the purposes of verifying compliance with the CSP contract.
<b>1469.34</b>	<b>Performance based on advice or action of NRCS representative</b>	Grants relief to CSP participants when advice of any authorized representative of the CCC was erroneous.
<b>1469.35</b>	<b>Offsets and assignments</b>	Allows participants to assign payments to others.
<b>1469.36</b>	<b>Misrepresentation and scheme or device</b>	Requires a producer who knowingly misrepresents any fact affecting a CSP determination to refund all payments plus interest received on all CSP contracts.

[\[M1\]](#) This response may need to be changed pending policy decisions.