



RR 1 Box 81B
Canton MN 55922
(507) 743-8300
www.mnproject.org
lkemp@mnproject.org

*...connecting rural and environmental issues
...connecting people with policy*

February 24, 2004

Via e-mail to: david.mckay@usda.gov

David McKay
Conservation Operations
NRCS PO Box 2890
Washington, DC 20013-2890.
Attn: CSP

RE: Proposed rule on Conservation Security Program, published January 2, 2004,
Volume 69 of the Federal Register at page 194.

Dear Mr. McKay:

Please find below our comments on rules for the Conservation Security Program as published in the Federal Register by the Natural Resources Conservation Service (NRCS) on January 2, 2004.

The Minnesota Project, based in St. Paul, Minnesota, is a nonprofit organization focusing on agriculture, conservation, and other issues affecting quality of life in rural and urban America. We connect people with policy in order to build strong local economies, vibrant communities, and a healthy environment. We have been working towards the CSP for at least five years, providing research, analysis, education and advocacy.

This proposed rule was drafted for a brief moment in time of limited funding through September of 2004. However, that moment passed when Congress removed the funding cap for the program beginning in October 2004, and that changes everything. We call on the U.S. Department of Agriculture to immediately issue a revised rule. We need a rule that follows from the intent of the law, and one that will serve to guide the Conservation Security Program for years to come.

We suggest that the \$41 million appropriated for 2004 be divided up amongst the states to develop demonstration CSP contracts by September 30, 2004. Then the full program can begin October 1 under final rules.

The rule as proposed does not meet the intent of Congress or the law, nor the vision that has driven so many citizens of all walks of life to support the CSP. Research reveals that CSP has higher name recognition than any other farm program - including the popular CRP. Yet the proposed rule does not fulfill that vision.

Above all, the vision of CSP is to provide financial incentives to drive massive improvements in conservation in this country. For that to happen, three conditions must be met. It must be open to all farmers; it must provide significant incentives; and it must set high environmental standards. We are pleased that the rule does the latter – it sets high environmental standards. But with highly restricted eligibility and laughably low payments, CSP is doomed to fail. **We address these artificial restrictions and low payments with specific comments below.**

A second overarching theme of CSP is that it is for all farmers. Unlike commodity programs, it is open to livestock farmers, fruit and vegetable growers, organic producers, and many others. It is open to large and small farms. Unlike other conservation programs, it is not just for those who have ongoing resource degradation, but also rewards those who have done a good conservation job all along on their own. Unfortunately, these rules fall short of achieving the goal of being open to all who agree to meet its conservation challenge. **Our comments below specifically address the barriers to open enrollment.**

A third theme of CSP is that it is intended to be the first truly comprehensive conservation program. It is intended to let farmers address both the unique and the ordinary resource problems of their specific site. It is intended to encourage an integrated approach that solves multiple problems. It should encourage farming systems that prevent problems in the first place. Unfortunately these rules put up multiple barriers. The NRCS should not attempt to redefine the CSP to make it a specialty program that is limited to rewarding only those producers who meet the very highest level of conservation management for sign-up specific priorities. **Our comments below address how to revise the rules to allow an integrated conservation approach.**

Subsection 1469.2 Administration

c) Consistent with the President’s proposed 05 budget, the last sentence should read, “Contract obligations for the current year of all contracts will not exceed the funding available to the Agency for that year.” In 2004, we’d like to have the Chief assign funds available to each state and the State Conservationists select a number of pilot/contracts to use as training models for producers and other NRCS personnel, to prepare to roll out a fully funded (uncapped) CSP in fiscal year ’05.

(d) The state conservationist **will** (rather than may) obtain advice from the State Technical Committee.

Subsection 1469.3 Definitions:

Agricultural land—The statute specifically states, “grassland, prairie land, improved pasture land.” These land types are not in the rules and should be included in the definition of agricultural land. Delete “other land on which food, fiber, and other agricultural products are produced.”

Agriculture operation—The term “cohesive management unit” is undefined and ambiguous, and could lead to multiple contracts per operator. The Minnesota Project opposes more than one CSP contract per operator. Delete “and constituting a cohesive management unit” from this definition.

Conservation Security Plan – Delete “once the application is selected.” The conservation security plan should be the basis for enrolling in the program, as it will specify what new practices and enhancement activities will be included.

Enrollment categories—Eliminate this term and definition from the CSP rules. Eligibility requirements such as enrollment categories are now obsolete and irrelevant with the lifting of the cap on entitlement status by Congress.

Land Management Practice—Add “resource conserving crop rotations” to examples of land management practices.

Local Work Groups—Add “non-governmental organizations, and farmers and ranchers” to the list of representatives who are part of a local work group.

Management Intensity—Following “...which are beyond the minimum requirements of a management practice, add “and which do not constitute routine maintenance activities that are reimbursable under the cost-share component of a CSP payment.”

Resource-conserving crop rotation—After “...at least one resource conserving crop” add: “such as 1) a perennial grass, 2) a legume grown for use as forage, seed for planting, or green manure, 3) a legume-grass mixture, 4) a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.”

Subsection 1469.4 Significant resource concerns—The statute provides that “The conservation priorities of a state or locality in which an agricultural operation is situated shall be determined by the State Conservationist, in consultation with the state technical committee... and local agricultural producers and conservation working groups. **Add** an item (d): State Conservationists may propose up to three more resource concerns in consultation with the State Technical Committee, and subject to approval by the Chief .

Subsection 1469.5 Eligibility requirements and selection and funding of priority watersheds: In order to ensure the Conservation Security Program is available to all producers through an open-enrollment process the use of priority watersheds as a tool for awarding contracts should be eliminated.

1469.5 (a) Applicant eligibility...

(a)(3)(ii) Clarify that written assurance of control from the landowner might be a letter of support, or statement of intent to continue leasing. It should not require an actual multiyear written lease. A letter from the landowner should be sufficient to determine who has control of the land and who is responsible for making decisions about land-use. Rules for the Conservation Security Program should error on the side of encouraging landowners and tenants to work together.

(a)(3)(iii): A tenant should receive payments for as long as the tenant has control of the land. When the tenant loses control of the land payments should cease. Also, delete the last sentence: “However, the land is considered part of the contract and is required to be maintained at the same conservation standard of (sic) the rest of the operation.”

(a)(4)(i): Delete this entire paragraph. Farmers and ranchers should be allowed to enter the program prior to solving all soil and water resource concerns. Conservation Security Plans should detail how the producer will address the required significant resources of concern to quality criteria level by the end of the third year of a CSP contract.

(a)(4)(ii): As in (a)4(i) above, the producer should be allowed to achieve non-degradation level of resource management for the nationally significant resource concerns while enrolled in the program and by the end of the third year of the CSP contract.

(a)(7) Delete the second phrase, “including but not limited to information related to eligibility criteria in the sign-up announcement;” because limited sign-ups and eligibility requirements related to sign-ups and enrollment categories should all be eliminated.

(a)(8): Delete all. We believe that CSP sign-ups should be eliminated, allowing the program to be an open enrollment program open to all producers. Therefore, any additional eligibility criteria should also be eliminated. Producers should be allowed to address any and all resource concerns using the full range of practices in the NRCS Field Office Technical Guide.

(b) Land eligibility...

(b)(5) It is unclear in this paragraph what “areas outside the boundary of the agricultural operation” means. Delete this reference.

(d) We support this language; it clarifies the true intent of the statute which is to not let CSP reward sobbusters.

(e) Selection and funding of priority watersheds

Delete all. Eliminate priority watersheds from the CSP rules. CSP was written as a nationwide entitlement program open to all farmers and ranchers who qualify. Restricting the program to selected watersheds does not meet the intent of the law and imposes a ranking system that is prohibited in the law. CSP should be an open enrollment program open to all agricultural producers across the nation.

Subsection 1469.6 Enrollment Categories—Delete this entire subsection as the law does not allow ranking or prioritization of applicants, and the capped entitlement status used as a rationale for enrollment categories no longer exists.

Subsection 1469.7 Benchmark condition inventory and conservation security plan

We support the concept of applicant-initiated benchmark condition inventory of the agriculture operation. However, as we are opposed to enrollment categories as eligibility requirements, we comment on this subsection as follows:

(a) Benchmark condition inventory

(a)(3)(ii) Delete all, because it refers to enrollment categories.

(b) Conservation Security Plan

(b)(1) Delete, “Once an application has been selected as eligible for CSP, NRCS may assist producers that agree to enter into conservation security contracts...” Replace with, “NRCS will assist producers that agree to enter into conservation security contracts...”

Subsection 1469.8 Conservation Practices

(a) Conservation practice selection

(a)(1) Delete all. We are opposed to only select practices being eligible. Producers should be allowed to develop their Conservation Security Plans using all practices in the FOTG in their state, so they can have a full array of practices from which to choose to solve resources concerns.

(a)(2) Delete, “State Conservationists may develop a targeted subset of eligible practices based on the nationally eligible list with the concurrence of the Chief for their proposed listing of.” Replace with, “State Conservationists, working with the State Technical Committee and local work groups, will develop a list of conservation practices, measures, and management activities eligible for enhanced payments.”

(a)(2)(i) Delete all.

(a)(2)(ii) Delete all.

(a)(3) Delete, “...national list of eligible CSP practices.” Replace with, “...NRCS Field Office Technical Guide.”

(a)(4) Delete, “...list of eligible practices” and Replace with, “...list of FOTG practices...”

Subsection 1469.9 Technical Assistance

(a) and (e) This subsection is confusing. If NRCS uses certified Technical Service Providers to perform its responsibilities (a), and also requires all Conservation Security Plans to be developed by certified conservation planners (e), does this mean a farmer has to work with two different entities—the TSP and the certified conservation planner? This would be the case if a TSP is not a certified planner. Needs clarification.

(c) and (d) In allowing TSPs to perform NRCS responsibilities in technical assistance, the NRCS should not delegate its approval authority of CSP contracts, plans or payments to private Technical Service Providers.

Subpart B—Contracts and Payments

Subsection 1469.20 Application for contracts and their selection

(b) Delete all. We are opposed to limiting application to sign-up periods. We are also opposed to the concept of CSP being implemented in any way that lacks transparency. Items (1) through (7) are all predicated on CSP being a capped entitlement program, a status that was eliminated in the 2004 appropriations bill. Producers should be able to commence an application at any time, like the continuous sign-up for the Conservation Reserve Program.

(c) Delete, "...according to the timeframes specified in the sign-up announcement." and Replace with, "...from qualified producers."

(c)(2) Delete all. We are opposed to sign-ups.

(e) Delete all. We are opposed to sign-ups and enrollment categories.

Subsection 1469.21 Contract requirements

(b) Delete, "...per agriculture operation." We are opposed to more than one CSP contract per operator.

(c)(1)(2)(3) Delete all. All of these items refer to additional requirements of enrollment categories at the different tier levels. We are opposed to enrollment categories and undefined additional requirements.

(d)(3)(i) Delete, "...and comply with any additional sign-up requirements;"

(d)(3)(iii) Delete, "...on the violation of a term or condition of the contract;" and Replace with, "...if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract."

(d)(6) Delete, "...or included as a requirement for the sign-up."

Subsection 1469.22 Conservation practice operation and maintenance—The sentence, "When NRCS finds that a participant is not operating and maintaining practices installed through CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract." should be modified to read, "...NRCS will request a refund of any associated payments made for **the operation or maintenance** for that practice under the contract."

Subsection 1469.23 Program payments

The proposed rules indicate that the CSP payment will be comprised of the sum of a base payment, an existing practice payment, a one-time payment for new practices, and an enhancement payment. The rules do not make it clear if a participant will receive an existing practice payment for new practices installed under a CSP contract. After a new practice is installed, and a cost-share payment for installation has been made, does the practice become an “existing” practice and eligible for existing practice payments? Further review of the NRCS proposed Management Intensity document dated January 13, 2004 seems to indicate that many of the proposed management intensities being considered by the NRCS are actually maintenance activities at varying degrees of intensities. In setting up the program in this manner the NRCS has replaced the bonus-type enhanced payment that was intended in the statute with an enhanced payment that, in essence, represents a maintenance payment for new practices. We propose this be amended with language that allows new practices to be considered “existing practices” after they are installed. CSP should provide participants with 1) a base payment; 2) a maintenance/management payment for qualified practices existing at the time of CSP enrollment; 3) a cost-share payment for installation of new practices (cost-share at least equal to cost-share for same practice under EQIP; 4) a maintenance/management payment on new practices installed under the CSP contract; 5) an enhanced payment that exceeds the participant’s cost for installation and management of conservation practices and activities that exceed minimum requirements for resource protection, as well as for meeting the other criteria established in the statute.

(a) Base component of CSP payments

(a)(1) In determining Base payments, and all other payments, pastured cropland should be valued at cropland rates for equity and to respect conservation efforts already in place so as not to penalize producers who have converted cropland to pasture as part of a management plan. Farmers who convert cropland to pastured cropland for purposes of implementing less intensive cropping systems such as prescribed rotational grazing should not be penalized by a reduction in land use category, resulting in lower payments. Cropland is cropland, regardless of how it is managed, and could always be converted back to crops at any time. To penalize a producer for implementing a different and more resource conserving cropping system such as pastured cropland, or pastured hay land, completely subverts the notion of rewarding farmers for increasing conservation and environmental benefits. If at some point during the CSP contract a farmer wishes to convert pastured cropland back to a row crop as part of a crop rotation management plan, consistent cropland payments—whether cropped or pastured—would not have to be adjusted.

(a)(2)(ii) Delete, “...then take a nationally set percentage of that average rate for a final rate.” We are opposed to the NRCS proposal to reduce the average rental rate by 90 percent as stated in (v) below.

(a)(2)(v) Delete, “...multiplied by a factor of .1.” The CSP statute clearly defines how Base Payments will be determined. This USDA-proposed reduction in the Base Payment

violates the law and serves as a deterrent to attracting qualified participants to the program.

(a)(4) A Base Payment should be paid for “other” land where it is required to be treated under Tier III or in any other tiers when required by the CSP contract.

(a)(5) Delete, “...at the time of the first sign-up.” Replace with “...upon the implementation of the program.”

(b) Existing practice component of CSP payments

(b)(2) Delete, “...but not limited to,” in the first sentence – there should be no exceptions to existing practice payments other than the ones listed in the statute related to conservation compliance. Replace, “NRCS may...,” with “NRCS will...” - these payments are spelled out in the statute. In reference to the “percentage of the average 2001 county cost of maintaining...,” the payment for maintenance of existing practices under CSP should in no instance be lower than what the maintenance payment would be for the same practice under an EQIP contract, and should include payments for maintaining a land management, vegetative, and structural practices. The rule is silent on payment rates, but we note that all alternatives studied in the Benefit Cost Assessment assume a 5% cost share rate, a ludicrously low payment. We support a rate closer to the 75% allowed by the statute. Delete reference to sign-up announcements in the last sentence.

Also, after, “...that is documented in the benchmark condition inventory as existing upon enrollment in CSP” add, “and for new practices installed under the CSP contract.”

(c) New practice one-time payments

(c)(1) Delete all. It is important that participants be allowed to select from all practices in the FOTG in determining which practices will best address the resource concerns.

(c)(2) CSP payments for new structural, vegetative, or management practices should be as close to the statutory “up to 75 percent” as possible. Under no circumstance should a cost-share payment of new practices be less than the cost-share payment for the same practice under EQIP. Again, the rule is silent on payment rates, but we note that all alternatives studied in the Benefit Cost Assessment assume a 5% cost share rate, a ludicrously low payment. We support a rate closer to the 75% allowed by the statute. Cost-share rates for new and existing practices should be published at the beginning of the program. Any reference to sign-up announcements in this section should be deleted.

(d) Enhancement component of CSP payments

(d)(2)(i) Delete all reference to sign-up announcements.

(d)(3)(i) & (iii) Delete all reference to sign-up announcements.

(d)(5)(ii) Delete “This amount will not exceed the participant’s estimated cost of undertaking such activity.” The CSP enhanced payment is the key to providing viable financial incentives for rewarding producers for the environmental benefits they provide.

If producers only receive reimbursement of costs for related enhancement activities the intent of the law to implement a green payments incentive program will not be met. It is very important that the enhanced payment component provide participants with a financial reward for producing public environmental benefits. It is inconceivable to think that we will “Reward the Best...” by only giving partial cost reimbursements for management activities that exceed minimum tier requirements, improve local resource concerns, implement research and demonstration projects, cooperate with other producers in a watershed, or carry out assessment and evaluation activities. Again, the rule is silent on payment rates, but we note that all alternatives studied in the Benefit Cost Assessment assume a 10-20% cost share rate, a ludicrously low payment.

(d)(5)(iii) Delete reference to sign-up announcements.

(g) Delete all. The Chief of NRCS should not have the ability to limit, redirect, or redefine payment components, thus creating an undefined, ambiguous program that does not serve all qualified farmers and ranchers nationwide.

Thank you for your attention to these comments and for attempting to incorporate suggested changes into a revised rule. We remain optimistic that with the restoration of entitlement funding by Congress for 2005, NRCS will agree with the intent of these comments and immediately issue a supplemental rule, open for a brief comment period. We anxiously await implementation as we approach the two-year anniversary of passage of the Conservation Security Program.

Sincerely,

Loni Kemp
Senior Policy Analyst

Mike McGrath
Agriculture Policy Specialist