



Conservation Security Program Comment Sheet

Publication of the proposed rule for the Conservation Security Program (CSP) on January 2, 2004, marks the start of the 60-day public comment period. Public comment will be an important part of creating the Conservation Security Program. You may access it via the Internet through the NRCS home page at www.nrcs.usda.gov. Select "Farm Bill." People can submit comments to david.mckay@usda.gov or mail their comments to Conservation Security Program Comments, ATTN: David McKay, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, D.C. 20013.

Comments are sought on all facets of the program. The intent of this document is to summate those areas. You are encouraged to refer to the proposed rule publication for detailed information.

1. Preferred Approach (page 197): Under the constraints of a capped entitlement, the Secretary has proposed ways to still deliver an effective CSP program. NRCS is proposing an approach based on five elements. Comments are requested on this overall approach:

- **Limit sign-ups:** Conduct periodic CSP sign-ups
- **Eligibility:** Criteria should be sufficiently rigorous to insure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.
- **Contracts:** Requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.
- **Enrollment categories:** Prioritize funding to insure that those producers with the highest commitment to conservation are funded first.
- **Payments:** Structure payments to ensure that environmental benefits will be achieved.

(A more detailed description of this approach can be found on page 197 under the heading *NRCS Preferred Approach*.)

Comments

CSP is not a capped program; it is an full-fledged, uncapped entitlement beginning October 2004. Many aspects of the so-called "preferred approach" are contrary to the letter and spirit of the law. NRCS should: drop the watershed limitation; drop enrollment "categories" limitation; make stewardship farmers who agree to resolve resources of concern during the contract period eligible to participate; dramatically increase payments to farmers; offer continuous rather than limited signups; and allow states to select their most pressing resource concerns to which farmers can respond.

2. Funding Enrollment Categories (page 198, 3rd column): Under "4. Prioritize Funding To Ensure That Those Producers With the Highest Commitment to Conservation Are Funded First," NRCS is inviting comment on how to handle situations where there may be insufficient funds for all enrollment categories.

Comments

Enrollment "categories" should be eliminated and CSP should be administered like the conservation entitlement program it is: if the farmer is eligible and meets all the pertinent conservation standards, then they should be enrolled. The program should set a high environmental bar and let all farmers and ranchers willing and able to reach it do so, without discriminating against any particular categories or classes of producers.

3. Enhancement Activities (page 199, column 1 and 2): The Statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

- The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements.

- An improvement in a priority local resource condition.
- Participation in an on-farm conservation research, demonstration or pilot project.
- Cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area.
- Implementation of assessment and evaluation activities relating to practices included in the CSP.

Comments

Enhancement payments should reward additional efforts and exceptional performance. Enhancement payments should be an incentive, not a cost share payment. Rewarding resource conserving crop rotations, managed rotational grazing, and comprehensive conservation buffer practices, as required by the statute, needs to be added to the rule and adhered to. On-farm research and demonstration projects and on-farm monitoring and evaluation projects should be strongly encouraged and should include compensation for the farmer's time and labor in addition to direct costs.

4. Alternative Approaches (page 199 and 200): In addition to the preferred approach, NRCS considered several alternatives. NRCS is seeking comments on the proposed approach and these alternatives.

- Use enrollment categories to prioritize CSP resources in high priority watersheds identified by NRCS administrative regions.
- Apportion the limited budget according to a formula of some kind, for example by discounting each participant's contract payment equally.
- Close sign-up once available funds are exhausted.
- Limit the number of tiers of participation offered.
- Only allow historic stewards to participate - only those who have already completed the highest conservation achievement would be funded.

Comments

None of the alternative approaches, nor the preferred approach, implement CSP as an uncapped conservation entitlement, nor are they consistent with the law. A new alternative should be proposed in a supplemental rule according to the provisions of the statute. Designating a few watersheds and "categories" defeats the goal of CSP as a national conservation program. Discounting already laughably low payments is unacceptable. Closing sign-ups when available funds are exhausted is better than the "preferred approach," but should only be utilized if Congress alters the entitlement status of CSP in the future. All three tiers must be retained so that farmers can enter the program according to where they start from in terms of conservation excellence; if the entitlement status were to change in the future, however, enrolling Tier 3 participants first would be a better approach than the "preferred approach." Finally, to only "reward the best" and not "motivate the rest" would seriously harm the CSP because there would be no focus on increasing conservation benefits.

5. Limited Resource Producers (page 201, column 3): NRCS welcomes examples and suggestions for identifying conservation opportunities related to limited resource operations. Comments regarding how other programs could best help limited resource and other less capitalized producers to become eligible for CSP, given the stewardship standards to participate, are also welcome.

Comments

Limited resource producers will benefit from raising the cost-share rate to 75%. Limited resource beginning farmers will benefit from the statute's provision for 90% cost share for these farmers. Promoting the most cost-effective practices requiring the least expenditure for the farmer's share of cost to solve resource concerns would also be advantageous. Increasing base and enhancement payments for everyone, so that CSP payments would contribute to the farm's bottom line, would make it easier for limited resource farmers to come up with their portion of cost share

6. Leveraging CSP (page 201, column 3): NRCS is seeking comment on the opportunity to use CSP in a collaborative mode with other programs to effectively leverage the Federal contribution to resource improvement and enhancement.

Comments

Creating collaboration among conservation programs to increase leveraging capabilities sounds good. NRCS has the perfect tool to make this happen - the Partnerships and Cooperation provision (Section 2003) of the 2002 Farm Bill. This initiative specifically calls for collaboration among state and local agencies, Indian tribes, and nongovernmental organizations to encourage cumulative conservation benefits through cooperation of producers spanning multiple agricultural operations. To carry out this provision the Secretary may use resources from any and all of the available conservation programs. NRCS should focus efforts to increase collaboration by implementing this long-delayed provision of the Farm Bill.

7. Leveraging CSP (page 202, column 1): NRCS is seeking comment on how to implement a program that uses collaboration and leveraging of funds to achieve resource improvements on working agricultural lands through intensive management activities and innovative technologies.

Comments

Collaboration efforts should be encouraged through implementation of the Partnerships and Cooperation provision (see above). The CSP proposed rule "collaboration" model, such as it is, requires the farm family to carry the financial load. It would limit cost-share to a very short list of practices and very low cost-share rates and limit enhancement payments to a low percentage of conservation costs. This will minimize participation and result in fewer conservation systems on working agricultural land, defeating the goals of the program. Special Note: Farmers and ranchers who would otherwise qualify for CSP but may need to add certain structural or vegetative practice(s) to reach resource enhancement levels should not be forced to apply to different conservation program before qualifying for CSP. Those farmers and ranchers would not be guaranteed funding under these other programs and NRCS should not look to limit participation by demanding certain practices be paid for through programs where funding is not guaranteed. There is typically two to three times more interest than funds available for capped conservation programs. This would only serve to delay implementation of enhanced conservation.

8. Environmental Performance, Evaluation and Accountability (page 202, column 3): NRCS welcomes comments and suggestions for designing and implementing evaluation approaches, and suggestions as to what data and information would be most useful to ensure a high level of accountability for CSP.

Comments

As provided for in the proposed rule, the evaluation process should begin with a benchmark inventory of the resources of concern. This will serve as a baseline that the conservation plan would go forward with and establish measurable goals for further enhancement of those resources. In addition, NRCS should provide strong incentives for on-farm monitoring and evaluation activities, and encourage the integration of farm level data into landscape and more macro-level monitoring, evaluation and analysis. One avenue for achieving the latter goal would be for NRCS to implement the Partnerships and Cooperation initiative contained in the 2002 Farm Bill.

9. Significant Resource Concerns (page 203): NRCS is proposing to designate water quality and soil quality as nationally significant resource concerns. NRCS requests additional public comment on the use of nationally significant resource concerns.

Comments

The conservation resource concern priorities should be set at least in part at the state level so the program can be as responsive as possible to the major resource issues in each region of the country. A good solution would be to have each state include soil quality and water quality among their top 5 resource concerns and have farmers enrolling in tier 1 or tier 2 choose to address at least 2 of the 5, at least 1 of which is soil quality or water quality, and farmers enrolling in tier 3 address all of the 5 relevant to their operation.

10. Definition of Agricultural Operation (page 205, column 2): The Act refers to "agricultural operation" without defining the term. NRCS has evaluated various definition alternatives and is seeking comment on their chosen proposed definition found on page 205, column 2. This definition is the same as used in the Great Plains Conservation Program (GPCP).

Comments

The agricultural operation should absolutely include all land owned and leased. Applicants should also demonstrate a reasonable expectation of control of the land for the contract period. However, the proposal requiring participants carry out conservation practices without financial assistance on leased land for which they cannot prove control for entire length of the contract is unfair and unworkable. NRCS should allow a farmer/rancher to include such land under a CSP contract and simply make contract and payment modifications if they lose the particular lease in question. Alternatively, NRCS could simply exclude such land from the contract altogether, though this would be a poor second choice.

11. Incidental Forest Land (page 206, column 1): Forestland offered for inclusion in a CSP contract as an incidental part of the agricultural operation must meet the guidelines listed on page 206, column 1. NRCS is seeking comments on the usefulness of these guidelines for managing questions relative to the inclusion of incidental forested lands in CSP contracts.

Comments

The specific definition of 'forest' proposed by NRCS may work in some parts of the USA, but is unlikely to work everywhere. NRCS should focus instead on the actual land use of the forested area and include all agroforestry practices

(e.g., windbreaks and shelterbelts, forest farming, nut harvest, alley cropping, forest buffers, silvopasture systems, etc.), perhaps with a maximum number of acres of such land that would be eligible under this category.

12. Incidental Forest Land Treatment (page 206, column 1): Another issue that NRCS seeks guidance on is the question of what level of treatment should be required for the forestland that is included in the CSP contract as land incidental to the agricultural operation?

Comments

Incidental forest land should both meet relevant quality criteria and be eligible for all forms of CSP payments. Agroforestry practices that assist the producer enhance resource conservation should be included in enhanced payment formulas.

13. Enhancement Payments (page 206, column 3): NRCS seeks additional comments on the construction and calculation of enhancement payments.

Comments

The enhanced payments section of the rules should clearly provide very substantial enhancement payments nationwide for resource-conserving crop rotations, managed rotational grazing, and comprehensive conservation buffer practices, as required by the law. Enhancement payments should also be available for high levels of management intensity leading to demonstrable resource and environmental enhancement. NRCS should emphasize enhancement payments for on-farm research, demonstration, monitoring, and evaluation, and should reflect the full cost of those practices (including producer time), since they provide substantial benefits to NRCS and society but often have little financial benefit to producers. The State Technical Committees should be authorized to approve enhancement payments for additional practices or systems that address local priority resource concerns, and for reaching participation targets in targeted areas.

14. Contract Limits (page 206, column 3): NRCS seeking additional comments on the idea of a one-producer, one-contract approach brought up by the respondents to the Advanced Notice of Proposed Rule.

Comments

One-producer, one contract is the proper approach. It would provide the fairest treatment of all producers and would reduce NRCS administrative costs. The rule should also attribute all payments to real persons. Without one producer, one contract and direct attribution of payments, NRCS would be opening up the program to fraud and abuse.

15. Administration (page 208, column 2): One important aspect of CSP administration is the procedures NRCS will follow if NRCS receives more eligible applications than it can fund. NRCS is specifically seeking comment on how to select the contracts of the pool of eligible producers to best serve the purpose of the program.

Comments

We do not believe the law allows USDA to "select" contracts from some eligible producers, while denying CSP contracts to other eligible producers. USDA should set reasonable eligibility standards, set a high environmental bar, and approve all submitted CSP Plans that meet those standards. Since Congress chose to limit funding for the current fiscal year, if NRCS receives more approved CSP Plans than it can fund in the current fiscal year, it should approve contracts for current year funding based on their application date, holding the remaining approved contracts and awarding them at the beginning of the next fiscal year. Those approved CSP Plans would be first in line to receive contracts beginning October 1, provided there are no substantial changes in the producer's situation or offer that would require a major revision in the Plan or Contract

16. Changes in Landuse (page 209, column 3): In some instances a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive landuse. This change in land use may change the base payment eligibility. NRCS is asking comment on how this situation can be addressed in the rule.

Comments

The rule should establish base payments based on NRCS land capability classes, not based on current land use. Rental rates for pasture are far lower than that of cropland. If NRCS were to figure base payments on land use, payments would be far lower for grazers, even if their land is fully capable of producing crops and, in a different owner or operator's hands, might well be cropped, perhaps at significant harm to the environment. Land which has been placed in permanent cover, a practice with enormous environmental benefits, should not be penalized financially. This program is about rewarding environmental performance and it should thus encourage should behavior through an appropriate payment structure.

17. Eligibility Requirements (page 210, column 1): Concerns were expressed through the Advanced Notice of Proposed Rule process that producers not accept stewardship payments while at the same time operating land outside the CSP contract at a less-than-acceptable level of treatment. NRCS is seeking comments on this provision.

Comments

This would apply to Tier 1 contracts only, since the other two tiers cover the entire agricultural operation. All land should be in compliance with the basic conservation requirements of the 1985 farm bill even if it is outside of the land covered under a Tier 1 contract. It is not clear NRCS would have the authority to require more than this, though the agency should certainly do everything possible to encourage producers to move up to Tier 2 as soon as possible.

18. Eligibility Requirements (page 210, column 2): Producers who have historically met or exceeded the requirements, in some cases, may have endured a flood, fire, or other event that has either destroyed or damaged practices that would have made them eligible for CSP. NRCS is seeking comment on whether there should be any special dispensation or consideration given for this situation.

Comments

Yes there should be some considerations factored in for forces beyond human control. It would unfairly penalize those who have implemented sound conservation practices to exclude them from the program.

19. Eligibility Requirements (page 210, column 3): As a contract requirement, the participant will be required to do additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement. NRCS is seeking comment on these minimum eligibility and contract requirements.

Comments

The ultimate goal of the participants should be focused toward regeneration and enhancement of resources. The program's tiered approach and enhancement payments will foster this objective. In regards to minimum eligibility, however, the proposed rule has established too high of a bar by proposing that participants need to have already fully achieved all soil and water quality resource quality criteria for Tiers 1 and 2 and all resource quality criteria for Tier 3. The legislation indicates these must be solved as a result of CSP participation. Participants should be close enough to achieving all relevant quality criteria that within the timeframe of their first CSP contract this goal will be met. If NRCS has other ideas in mind for "additional requirements" for eligibility, it is incumbent on the agency to release those in detail for public comment.

20. Eligibility Requirements (page 210, column 3): NRCS is also seeking comments on the utility of a self-screening tool (both Web-based and hardcopy) to assist producers in determining if they should consider application to CSP. Should this self-screening tool be a regulatory requirement as described in the proposed rule?

Comments

The self-screening tool could help manage the work load for NRCS. However, farmers and ranchers should be free to come into their local NRCS office to seek assistance with program sign-up including help with particular screening tool questions for which they need assistance. While use of such a tool may greatly reduce demands on staff time, it is unrealistic to expect any screening instrument to totally eliminate face to face contact with resource professionals.

21. Enrollment Categories (page 211, column 1): NRCS is proposing to fund as many subcategories within the last category to be funded as possible. Additionally, NRCS is seeking comments on whether the remaining subcategories should be offered pro-rated payments, or not funded at all.

Comments

If the program is administered as an entitlement program as required by law, this question is no longer relevant. Should the program be capped in a particular year, enrollment categories would still be unnecessary. If the funding constraint is severe, NRCS should enroll Tier 3 applicants first, followed by Tier 2. Payments should not be pro-rated. Rather, contracts should be funded by date of application, with unfunded contracts held over to the following fiscal year.

22. Enrollment Categories (page 211, column 1): NRCS is seeking comments on whether it should partially fund applications, or whether only those categories and subcategories that could be fully funded would be offered a CSP contract.

Comments

Enrollment categories should be eliminated. CSP is a comprehensive conservation incentives program. Pro-rated or partial payments will not lead to enhanced conservation but rather represent a disincentive for program participation.

23. Conservation Practices (page 211, column 3) NRCS is proposing to utilize the new practice component of CSP to provide cost-share when practices are needed, although at a lower cost share than other USDA programs, to minimize redundancy between CSP and other existing USDA conservation programs. NRCS seeks comment on whether this approach will encourage participants to install practices through other programs in order to become eligible for CSP.

Comments

The purpose of this rule should not be to limit participation in CSP but rather to implement the law as passed by Congress. The full range of NRCS-approved practices should be allowed for consideration as part of CSP conservation plans. The proposed rule attempts to encourage participation in other programs by restricting participation in CSP. As a result, farmers and ranchers wishing to transition to sustainable agriculture could be denied access to the program. This "minimize redundancy" proposal is a blatant misuse of administrative discretion. Its goal seems to be to present the most farmer-unfriendly approach possible to program administration in order to frustrate the agency's customers and discourage participation.

24. Technical Assistance (page 211 and 212): CSP technical assistance tasks identified include: 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 seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers.

Comments

The NRCS, through local NRCS and SWCD offices, should conduct the sign-up and application process. Conservation planning, conservation practice survey, layout, and design are tasks that can be performed by NRCS-certified/approved TSPs. Installation and certification of practices in CSP plan should include oversight by NRCS/SWCD. NRCS should be encouraged to conduct training and certification programs for TSPs to provide a qualified, competent pool of TSPs who can provide technical assistance over a wide range of relevant resource management practices. Evaluation and assessment of the producer's operation and maintenance needs can be part of the CSP plan put together by the TSP; however, NRCS should not delegate away its review/oversight of the proposed CSP plan or its implementation.

25. Additional Requirements for Tier I and Tier II (page 212, column 2): NRCS is proposing that CSP participants must address the following by the end of their contract:

- Tier I contracts must address the national significant resource concerns and any additional requirements as required in the enrollment category or sign-up announcement; and
- Tier II would require a significant resource concern, other than the national significant resource concerns, to be selected by the applicant over the entire agricultural operation.

NRCS is seeking comment on the value of these additional requirements for Tier I and II contracts in order to maximize the environmental performance of the CSP program.

Comments

The nature of any additional requirements should be delineated and issued for public notice and comment within the rule for the program. It is impossible to comment on the value of unnamed requirements. The agency does itself and the public a disservice in rulemaking by "placeholder."

26. Tier Transition (page 212, column 2): NRCS is proposing a mechanism for a participant to transition to a higher tier of participation and is seeking comment on this proposal (see page 212).

Comments

Transitioning to a higher tier should be an objective of the program. Contract modification procedures should be as fair and simple as possible. The proposal to delay tier transition and thus higher payment for 18 months following the actual transition seems unreasonable as the financial assistance to help make the transition would be provided too late. The payment delay should be limited to base payments only, not to cost share or enhancement payments necessary to bring the transition to fruition.

27. Contract Noncompliance (page 212, column 3): If the participant cannot fulfill his CSP contract commitment, the contract calls for the participant to refund any CSP payments received with interest, and forfeit any future payments under CSP. NRCS is interested in comments on this and other concerns that the public might have on noncompliance with the CSP contract requirements.

Comments

The law is very clear on this point. The CSP, like all other NRCS programs, is to operate with wide agency discretion with respect to contract noncompliance, so that the penalty, if any, fits the particular circumstance. The rule is correct to provide for reasonable time periods to return to compliance and to provide for retention of CSP payments in cases of good faith participation and in cases of compliance problems resulting from hardships beyond the producer's control. However, the rule misstates the law on this point in the section on contract requirements and should be corrected to reflect the agency's considerable discretion.

28. Rental Payment Reduction Factor (page 213, column 1): NRCS is seeking comment on whether the reduction factor should be fixed or variable over the life of the program, with the 0.1 factor being the upper limit.

Comments

The rule should be revised to set base payments at a reasonable percentage of agricultural use land valuation. If, however, NRCS is determined to keep base payments based on rental rates, the 0.1 factor should be eliminated. Base payments should neither be the biggest part of the CSP payment structure nor a trivial amount. The 0.1 factor makes them insignificant, and to make them lower still would be even more absurd.

29. Assessment and Evaluation (page 214, column 1): NRCS is seeking comments on which assessment and evaluation projects would most benefit from the involvement of CSP participants and would be most useful for program evaluation.

Comments

NRCS should not discount the value of on-farm monitoring and evaluation to the farmer. Good on-farm monitoring and evaluation can help the operator continually adapt the conservation system to achieve optimal benefits. It can also play a big educational role in rallying entire communities to make locally-appropriate changes. That said, linking the knowledge gained through such means as farmer networks and electronic databases will also further increase the value of this information, as will incorporating participating farms into larger monitoring and research endeavors such as those that would be available if NRCS were to implement the long-delayed Partnerships and Cooperation initiative.

30. Enhancement Activity Payments (page 214, column 1): NRCS is seeking comments on how to determine the appropriate payment rates for those types of enhancement activities where the payment is intended to encourage producers to change their mode of operation, but not necessarily to offset additional or more expensive activities.

Comments

Enhancement payments should be based as much as possible on performance outcomes. Linking these practices and systems to the on-farm research and demonstration and the on-farm monitoring and evaluation factors will help make this possible. From a performance or outcome perspective, enhancement payment rewards for environmentally-important management changes that do not necessarily entail significant out-of-pocket costs are entirely appropriate. Enhancement payments should reflect cost plus an incentive or bonus. Where there is little or no cost, they should be set at a flat bonus rate.