

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1470

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) administers CSP. Under CSP, NRCS is authorized to provide financial and technical assistance to owners and operators of agricultural operations to promote conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and other conservation purposes. NRCS is interested in obtaining public input before developing a proposed regulation.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the implementation of the program. These comments will help NRCS in the agency's development of a proposed rule. NRCS intends to publish the proposed rule in 2003 and therefore has narrowed the comment period for this advance notice to 30 days. The public will have another opportunity to provide input during the comment period for the proposed rule prior to NRCS publishing a final rule for the program.

DATES: Comments must be received in writing by March 20, 2003.

ADDRESSES: Send comments in writing, by mail, to Conservation Operations Division, Natural Resources

Conservation Service, PO Box 2890, or by e-mail to FarmBillRules@usda.gov; Attn: Conservation Security Program. This Advance Notice of Proposed Rulemaking may also be accessed via the Internet through the NRCS homepage, at <http://www.nrcs.usda.gov>, and by selecting Farm Bill 2002. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Mark W. Berkland, Director, Conservation Operations Division, NRCS, PO Box 2890, Washington, DC 20013-2890; telephone: (202) 720-1845; fax: (202) 720-4265; submit e-mail to: mark.berkland@usda.gov, Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION:

General Information about the Conservation Security Program

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

In keeping with principles outlined in the USDA publication, "Food and Agriculture Policy—Taking Stock for the New Century", the Secretary's vision for CSP's unique role within USDA conservation programs is:

- (1) To identify and meaningfully reward those farmers and ranchers meeting the very highest standards of conservation and environmental management on their operations;
 - (2) To create powerful incentives for other producers to meet those same standards of conservation performance on their operations; and
 - (3) To provide public benefits for generations to come.
- In short, CSP should reward the best and motivate the rest.

The intent of CSP is to support ongoing conservation stewardship of agricultural lands by providing assistance to producers to maintain and enhance natural resources. The program is available in all 50 States, the Caribbean Area and the Pacific Basin area. The program provides equitable access to benefits to all producers, regardless of size of operation, crops produced, or geographic location.

NRCS is seeking public comment to help the agency develop a proposed rule. The public will have the opportunity to provide additional input during the proposed rule's comment period prior to the publication of a final rule.

Under the statute, CSP is available on cropland, grassland, prairie land, improved pasture, and range land, as well as certain forested land that is an incidental part of an agriculture operation.

Background

According to statute, an inventory will be conducted to identify resource concerns and determine the extent of conservation treatment that is being applied and maintained on their land. Authorized payments include a base payment determined by the treatment level, cost-share for applying conservation practices, maintenance payments for applied conservation practices, and enhanced payments for treatment that exceeds the minimum criteria. A three-tiered approach is used when offering payments.

If a producer desires to move to a higher tier, cost-share payments for needed structural practices are available through the CSP at up to 75 percent of the cost of the new practice, or up to 90 percent in the case of beginning farmers or ranchers. Participants may contribute to the cost of the new practice through in-kind sources, such as personal labor, use of personal equipment, donated labor or materials, and use of on-hand or approved used materials. Cost-shared practices are to be maintained for the life of the practice. All needed practices and management must be in place and maintained before a producer can move to the next tier. Similar to other United States Department of Agriculture (USDA) conservation programs, the 2002 Act requires that the Conservation Security Program (CSP) provide financial incentives to agricultural producers that undertake new

conservation efforts that meet high environmental standards. However, unlike other USDA conservation programs, the 2002 Act requires that CSP provides financial assistance for maintaining conservation. A clear intent of the program is to financially reward producers for significant environmental goods and services they provide to the public through their annual and ongoing conservation efforts. CSP, therefore, raises new and important issues that have not been confronted previously for traditional conservation programs.

NRCS undertook two projects to identify and better understand those elements in the design of the program that would have the most influence on its performance. In the first project, the firm, Plexus Marketing Group, was retained to conduct nine focus groups to obtain inputs from representative agricultural and stakeholder groups regarding key elements of the CSP to assist NRCS in developing program rules. In the second project, the Soil and Water Conservation Society (SWCS) organized five workshops to obtain feedback on CSP and its implementation from producers and NRCS field staff.

The Plexus focus groups were held as follows:

Three (3) were conducted in various states with a representative cross section of groups:

November 12 Columbia, MO
November 13 Modesto, CA
November 14 Macon, GA

Six (6) were held in Washington, DC with specific groups:

November 19 Agricultural Media Group
November 19 Livestock Group
November 20 Fruits & Vegetables Group
November 20 Crops Group
November 21 Wildlife and Sportsman Groups
November 21 Environmental Groups

The composition of the groups were determined by the firm with assistance from NRCS. The firm facilitated the participants through a series of questions to solicit their feedback on key issues relevant to rulemaking for the new program.

The five SWCS workshops were held in the following locations:

November 12 Billings, Montana (Montana, Wyoming)
November 14 Fort Morgan, Colorado (Colorado, Wyoming)
November 21 Defiance, Ohio (Ohio, Michigan, Indiana)
December 3 Greenville, Mississippi (Mississippi, Arkansas, Louisiana)
December 11 Fresno, California (California)

Four NRCS field staff and 12 producers participated in each workshop. Producers were selected in an unbiased manner which assured that they were not exclusively conservation-oriented or farm program participants. Producers were interviewed to solicit their feedback on key issues relevant to rulemaking for the new program.

Key Issues for Comment

The results of these two projects coupled with analyses conducted by NRCS have identified several key issues in rulemaking that will have profound effects on the performance and effectiveness with which CSP can be used to meet the objectives of the statute. The SWCS workshops, for example, identified important opportunities to simultaneously streamline and enhance the conservation performance of CSP. The focus groups, on the other hand, felt it important to do the program "right" at the onset even if it meant slowing initial implementation; further the participants were concerned about flexibility and accountability. Both groups identified concerns about the potential budget implications of the program. One of the overarching issues identified was the tension between the demand for the program and the budget concerns.

NRCS is currently analyzing in detail the information gathered through the workshops and focus groups to inform its rulemaking in regard to the key issues raised in the workshops, focus groups, and agency analyses of alternatives. Given the importance of these issues to the performance and effectiveness of CSP, NRCS is seeking additional public comment. NRCS is specifically interested in receiving public input regarding how CSP can be used to meet the objectives of the statute on the following issues:

1. The law specifies that conservation security plans address one or more "significant" resource concerns. Resource concerns may be as general as soil erosion or water quality or as specific as soil erosion by water or ground water quality. Many concerns have no practical direct measurement techniques or tools. What criteria should be used to determine what is a resource concern and whether a resource concern is significant?

2. The law requires that NRCS establish minimum requirements for three tiers of conservation effort. The minimum could be as specific as a list of minimum practices or as general as bundling of conservation measures that achieve a desired resource outcome. What should be the minimum requirements for each tier? Should

NRCS establish minimum requirements that apply to all contracts nationally? What could some of these requirements be?

3. The law requires NRCS to describe the particular practices to be implemented, maintained, or improved as part of the program. What criteria should be used to determine which practices and activities are eligible for payment under the program? Should specific practices or activities receive priority for payment under the program? To what extent should sets of practices and activities be accorded priority for payment under the program?

4. The law restricts the maximum base payment to a percentage of the total contract cap (*i.e.* 25 percent for Tier I and 30 percent for Tiers II and III). What should be the balance of the base payment, maintenance cost-share payment and enhancement payment to reward the steward and attain additional conservation benefits?

5. The law uses the extent of the agricultural operation covered by the contract as a primary distinction between Tiers I and II. Tier I covers the "enrolled portion of the agricultural operation", while Tiers II and III cover "the entire agricultural operation." With the variety of ownership and landowner-tenant relationships which change over time across the country, how should "agricultural operation" be defined?

6. The law specifies the eligible land for payment purposes as cropland, grassland, prairie land, and rangeland as well as forestland that is an incidental part of the agricultural operation. Should noncropped areas, such as turn rows or riparian areas, that are part of the agriculture operation be included for conservation treatment? Should farmsteads, ranch sites, barnyards, feedlots, equipment storage, material-handling facilities, and other such developed areas be considered part of the "agricultural operation"? What criteria should be used to determine those areas of a farm or ranch that might legitimately be excluded from the "agricultural operation"?

7. The law specifies that NRCS make a base payment as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. How should NRCS determine the base payment? If an alternative to the national rental rate is used, how should it be constructed? Should the payments be determined at the national, state or local levels?

8. The law provides for an enhanced payment if an owner or operator does one or more of the following: (a)

Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in a watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhanced payments are meant to ensure and optimize environmental benefits. How should enhanced payments be determined and calculated?

9. The law does not limit the number of contracts held by a producer. Should there be a limitation on the total number of contracts a producer may have? If there is no limit on the number of contracts, should USDA set an individual payment limitation for producers with multiple contracts?

10. The law requires that the regulations provide for adequate safeguards to protect the interests of tenants and sharecroppers, including provisions for sharing payments, on a fair and equitable basis. Concerns have been raised over the impact of CSP provisions on owner/operator relationships including changes in rental rates or changes in operators. How can NRCS ensure that payments are shared on a fair and equitable basis?

11. The law requires a minimum contract length in CSP of five years. Many landlord-tenant relationships are short-term in nature, usually less than five years. Should the applicant be required to have control of the land for the complete CSP contract period? How should the program address the tension between the return to management versus the return to capital?

12. The law does not prescribe a funding or acreage cap for CSP. USDA estimates that there is a potential applicant pool of over two million farms and ranches covering over 900 million potential eligible acres. A primary implementation concern is the program scope. In order for this program to accomplish the Administration's goal of maximizing the conservation and improvement of natural resources, it is necessary to prioritize CSP assistance. The Department is seeking public comments on ways to focus and prioritize CSP assistance. For example, if the program would only fund the highest-priority applications, should there be an open application process with all applicants competing for a limited number of contracts? Should applications be constrained by resource concern, program funding, tier level, owner-operator relationship, geography or other constraint?

13. The law includes energy as a resource concern for CSP program purposes. The NRCS Field Office Technical Guide does not recognize energy as a natural resource concern and therefore no quality criteria or non-degradation standard exists to compare a conservation treatment against. NRCS is seeking comments on how energy use should be incorporated into the program requirements. How should the benefits be assessed?

14. The law includes payment for conservation practices described as requiring planning, implementation, management and maintenance. A concern was raised as to whether the payment would be, in fact, a return for equity in capital or for the engagement in intensive management. What should the program be paying for?

15. The law provides little guidance for monitoring quality assurance or specifics on identifying contract violations. The issue is two-fold in nature encompassing both the measurement of outcomes from a performance standpoint and assuring the Federal funds are spent wisely and that contracts are appropriately carried out. How should USDA ensure accountability? NRCS will accept all other comments on general program implementation.

Regulatory Findings

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), USDA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this Advanced Notice of Proposed

Rulemaking is a "significant regulatory action" in light of the provisions of paragraph (4) above as it raises novel legal or policy issues. As such, this action was submitted to OMB for review.

Signed in Washington, DC, on February 6, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service and Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01-040-1]

RIN 0579-AB38

Importation of Milk and Milk Products From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of animal products to establish specific processing requirements for certain cheeses, butter, and butteroil imported from regions in which foot-and-mouth disease exists; these products are currently exempt from the requirements of the regulations. Additionally, we are proposing to require that those products, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification regarding the processing of the products. The proposed processing methods could also be used for other milk products that are currently eligible for importation under other conditions. We believe these actions are necessary to ensure that materials containing the foot-and-mouth disease virus are not imported into the United States.

DATES: We will consider all comments that we receive on or before April 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-040-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River