

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE FINAL INTERIM RULE:
CONSERVATION STEWARDSHIP PROGRAM (CStP)**

Agency: US Department of Agriculture
Natural Resources Conservation Service (NRCS)

Subject: Civil Rights Impact Analysis
Conservation Stewardship Program Interim Final Rule
2008 Farm Bill

A review of the Conservation Stewardship Program, interim final rule has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the final Conservation Stewardship Program (CStP) rule would have a disproportionate adverse civil rights impact for producers who are minorities, women, or persons with disabilities.

BACKGROUND

The Food, Conservation, and Energy Act of 2008 established the new CStP to replace the Conservation Security Program. The CStP is a voluntary nationwide program implemented under the general supervision and direction of the Chief of the Natural Resources Conservation Service (NRCS), under the borrowing authority of the Commodity Credit Corporation (CCC). CStP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. Through CStP, NRCS provides financial and technical assistance to participants for the conservation, protection, and improvement of soil, water, and related natural resource concerns. The purpose of CStP is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities, and improving, maintaining, and managing existing conservation activities. In response to the 2008 Act's establishment of CStP, NRCS is issuing an interim final rule, with request for comment.

LEGISLATIVE CHANGES

The significant features of the newly established CStP are contained in 7 C.F.R. Part 1470 and include:

1. In §1470.2, NRCS identified the CStP is available nationwide to eligible producers on a continuous enrollment basis with one or more ranking periods annually.
2. In §1470.2, NRCS further identified that conservation measurement tools will be developed to estimate the increased conservation performance to be achieved by

- participants in implementing conservation activities for the purpose of carrying out CStP.
3. In §1470.4, NRCS will allocate acres and associated funds to States, based primarily on each States proportion of eligible land compared to the total amount of eligible land in all States.
 4. In §1470.5, NRCS shall ensure that outreach and technical assistance are available and program specifications are appropriate so as not to limit producer participation because of size or type or operation, or production system, including specialty crop and organic production.
 5. In §1470.6, private and Tribal agricultural lands and nonindustrial private forest land are identified as land eligible for enrollment and annual payment under CStP.
 6. In §1470.20, NRCS will rank CStP applications based on specific environmental benefit and cost factors. The section also identifies that State Conservationists will take actions to facilitate ranking that include:
 - a. Identifying not less than 3 nor more than 5 priority resource concerns for a State, sub-state geographic area, or watershed level, with advice from the State Technical Committee;
 - b. Establishing funding pools within which applicants compete for application approval, including specific funding pools for socially disadvantaged producers, beginning producers, and nonindustrial private forest land; and
 - c. Using the conservation measurement tool to evaluate stewardship activities for confirming eligibility and determining application ranking scores.
 7. In §1470.24, NRCS offers two types of payments to participants:
 - a. An annual payment for increased conservation performance achieved by installing additional enhancements; and
 - b. A supplemental payment for the adoption of a resource-conserving crop rotation.
 8. In §1470.24, the CStP payment limit is established to ensure that no person or legal entity receives payments exceeding \$200,000 for all contracts entered into during any 5-year period, to be monitored through direct attribution to a person.
 9. In §1470.25, NRCS may allow a participant to modify a stewardship contract if the modification is within the scope of the initial contract, but will not allow a participant to modify a contract to increase the contract obligation or add land to a contract unless such addition is the result of an acceptable transfer of land already enrolled in CStP.
 10. In §1470.26, NRCS may allow a participant to renew the contract for one additional five-year period if they meet proposed criteria. Through the regulation comment period, NRCS hopes to receive public feedback on renewal criteria that require the participant to:
 - a. Be in compliance with the terms of their initial contract;
 - b. Add newly acquired land that is not under contract to their agricultural operation;
 - c. Meet stewardship thresholds for additional priority resource concerns; and
 - d. Install additional enhancements.

CIVIL RIGHT IMPACT ANALYSIS

The Civil Rights Impact Analysis (CRIA) is directed towards the identification and examination of actual or potential Civil Rights implications that may adversely impact the participation of protected group members. The purpose is to identify all the various adverse implications the interim final CStP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact.

Disparate impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review and analysis examined: (A) general provision; (B) administration and development; (C) historical and participation data; (D) eligibility criteria; (E) outreach strategy; (F) NRCS Civil Rights Divisions conclusion and (G) NRCS Civil Rights Director's certification.

- The examination sought to determine what segment of the population will be affected by the rule;
- if all the affected groups will be provided the same opportunities to comment on the rule during the public notification period and participate in the decision-making or rulemaking process for CStP;
- if all protected group members historically were provided the same opportunities to participate in similar NRCS programs; and
- if all protected group members were provided the same information in order to determine whether or not they wished to participate in CStP or any similar NRCS programs.

A. General Provision

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) replaces the Conservation Security Program with the new CStP for fiscal years 2009 through 2017.

To be eligible to participate in CStP, applicants must:

- Demonstrate that they are meeting the stewardship threshold for at least one resource concern; and
- Meet or exceed the stewardship threshold for at least one priority resource concern by the end of the conservation stewardship contract.

The program will enroll an additional 12,769,000 acres for each fiscal year. Acreage will be allocated based primarily on each State's or Area's proportion of eligible acres to the total number of all eligible acres.

In addition to private agricultural lands, up to 10 percent of the enrolled acreage may be in nonindustrial private forest land.

State Conservationists and their designees will rank and select applications based on national, State, and local criteria. Contracts will cover the entire agricultural operations and will be for 5 years.

CStP payments will compensate producers for:

- Installing and adopting additional conservation activities;
- Improving, maintaining, and managing conservation activities in place at the time the contract offer is accepted by the Secretary;
- Adopting resource-conserving crop rotation to achieve beneficial crop rotations;
- Engaging in activities related to on-farm conservation research and demonstration activities, and pilot testing of new technologies or innovative conservation practices.

CStP payments to a person or legal entity may not exceed \$200,000 for all contracts entered into during any 5-year period. The 2008 Farm Bill prohibits new contracts under the Conservation Security Program (as authorized in the 2002 Farm Bill) after September 30, 2008, and provides for funding for all current contracts.

B. Administration and Development

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) To achieve the conservation goals of CStP, the Chief shall, to the extent practicable:

- (1) Make the program available nationwide to eligible producers on a continuous enrollment basis with one or more ranking periods, one of which shall occur in the first quarter of each fiscal year; and
- (2) Develop conservation measurement tools for the purpose of carrying out the program.

(d) The State Conservationist will:

- (1) Obtain advice as required from the State Technical Committee and local working groups on the development of State program technical policies, outreach efforts, and other program issues;
- (2) Identify, as appropriate and necessary, designated conservationists who are NRCS employees that are assigned the responsibility to administer CStP at the local level; and
- (3) Be responsible for overall general administration of the program in their assigned State.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of an Indian Tribe or Tribal Nation, certain items identified in § 1470.2(d)(1) may be determined by the Indian Tribe or Tribal Nation and the NRCS Chief.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data, a barrier analysis on participation was not conducted. Historical data has been maintained, however it has been deemed unreliable due to the fact it does not include information on the number of program participants with disabilities, nor does it differentiate between whether small business entities are male or female owned.

D. Eligibility Criteria

(A) Eligible applicant. To be eligible to participate in CStP, an applicant must:

- (1) Be the operator of record for the agricultural operation in the Farm Service Agency (FSA) farm record system;
- (2) Have documented control of the land for the term of the proposed contract unless an exception is made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), Indian land, or other instances in which the Chief determines that there is sufficient assurance of control;
- (3) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;
- (4) Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;
- (5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility criteria and ranking factors; conservation and production system records; information to verify the applicant's status as a historically underserved producer if applicable; and payment eligibility as established by 7 CFR part 1400.

(B) Eligible land – payment acres. A contract application will include the eligible land on an applicant's entire agricultural operation, except as identified in paragraph (d) of this section. The following land as described is part of the agricultural operation, and eligible for enrollment and annual payment under CStP:

- (1) Private agricultural land;
- (2) Agricultural land that is Tribal, allotted, or Indian trust land; and
- (3) Nonindustrial private forest land. Only nonindustrial private forest land designated by the applicant for funding consideration will be considered part of the agricultural operation. No more than 10 percent of the annual acres enrolled nationally in any fiscal year may be nonindustrial private forest land.

(C) Eligible land – non-payment acres. The following land is part of the agricultural operation and eligible for enrollment, but will not receive direct payment in CStP:

- (1) Other private agricultural land (including cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for

production of livestock) on which agricultural commodities or livestock are produced and resource concerns could be addressed;

(2) Incidental forest land; and

(3) Land used for crop production after June 18, 2008, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless that land does not meet the requirement because the land:

(a) Had previously been enrolled in the Conservation Reserve Program;

(b) Has been maintained using long term rotations as determined by the designated conservationist; or

(c) Is incidental land needed for efficient operation of the farm or ranch as determined by the designated conservationist;

(d) Ineligible land. The following land is part of the agricultural operation, but is ineligible for enrollment or payment in CStP. The conservation treatment on ineligible land may be considered to determine an application's ranking score.

(1) Land enrolled in the Conservation Reserve Program, 7 CFR part 1410;

(2) Land enrolled in the Wetlands Reserve Program, 7 CFR part 1467;

(3) Land enrolled in the Grassland Reserve Program, 7 CFR part 1415; and

(4) Public agricultural land including land owned by a Federal, State or local unit of government.

E. Outreach Strategy

NRCS will establish program outreach activities at the national, State, and local levels to ensure that potential applicants who control eligible land are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to historically underserved producers, Indian Tribes, Alaska Natives, and Pacific Islanders. The Chief shall ensure that outreach and technical assistance are available and program specifications are appropriate so as not to limit producer participation because of size or type or operation, or production system, including specialty crop and organic production.

The Financial Assistance Programs Division (FAPD) will work in partnership with the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed CStP rule will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained and information regarding the rule will be sent to land-grant Universities, 1890 Universities, Hispanic Association of Colleges and Universities, colleges and universities located in U.S. Territories, and Tribal Colleges and Universities.

FAPD will work with the Outreach Division to submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgriAbility Project (20,000-30,000 farmers with disabilities receive their Breaking New Ground Newsletter).

Significant media outreach will be undertaken to acquaint under served producers with the provisions of CStP. Spanish-translated press releases and informational materials will be made available.

The locally led process at the service centers level is key and provides for input from a broad range of agencies, organizations, businesses, and individuals in the local areas who have an interest in natural resource management. Through this input process there is the opportunity for minority and socially disadvantaged groups to be informed regarding CStP. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

States will make every effort to reach all eligible producers through various means including newspapers, magazines, local publications, radio, personal contacts, meetings, newsletters, churches, organizations, community advocacy groups, etc. Special efforts will be made to distribute the information regarding the CStP through personal mailings to potential participants in NRCS conservation programs who are minorities, women, or persons with disabilities.


F. Conclusion

Therefore, our review of the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. When the rule is published, all populations will be provided the opportunity to comment on the rule. The data presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs.

Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. The provisions of CStP apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status.

G. Certification

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


JOSEPH E. HAIRSTON
Director, Civil Rights Division
Natural Resources Conservation Service (NRCS)

11/19/08
Date