

CRS Report for Congress

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Implementing the Conservation Security Program

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Summary

The Conservation Security Program (CSP) was authorized in the 2002 farm bill (§2001, P.L. 107-171), with no funding limits. In March 2004, the Congressional Budget Office estimated CSP would cost \$8.9 billion from 2005 to 2014. CSP was limited to \$6 billion from 2005 to 2014 in P.L. 108-324, with the \$2.9 billion difference used to pay for agricultural disaster assistance. In FY2005 appropriations, CSP has been limited to \$202.4 million as a one-year spending cap for FY2005 (H.R. 4818, Division A, Title VII, §749). On November 2, NRCS announced that farms located in 202 watersheds nationwide will be eligible for CSP in FY2005. See [http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html] for a map of these watersheds.

The FY2005 signup will be the second CSP signup. The first signup took place in July 2004. In August 2004, the Natural Resources Conservation Service announced it had awarded 2,188 CSP contracts to producers in 18 watersheds nationwide. The 2004 signup was controversial because NRCS instituted strict eligibility criteria for enrollment that were not included in the CSP authorization. NRCS contends it was forced to prioritize funds due to a \$41.4 million FY2004 CSP funding limit imposed by Congress. Critics maintain that prioritizing funds is inconsistent with the CSP authorization.

House and Senate Agriculture subcommittees held hearings on CSP in spring 2004. This paper will be updated as necessary. (For a full discussion of CSP as enacted, see CRS Report RS21739, *The Conservation Security Program in the 2002 Farm Bill*.)

Background on CSP

CSP in the 2002 Farm Bill. The Conservation Security Program (CSP) is a new agricultural conservation program created in the 2002 farm bill (P.L. 107-171, §2001). It provides incentives for farmers to pursue conservation and helps pay for conservation practices. Unlike some other NRCS programs, it pays for conservation on land that remains in production and makes eligible a wide range of farm lands (cropland, pastureland, rangeland, grassland, prairie land, tribal lands, and forested lands incidental

to an agricultural operation). Under CSP, NRCS pays farmers to conserve at least one resource (air, soil, water or others) on a portion of their farms; the greater the farm area covered and the more resources conserved, the higher the potential payments.¹ The farm bill places no acreage or funding limits on the CSP, and states that “in entering into conservation security contracts ... [NRCS] shall not use competitive bidding or any similar procedure.”² At the time of enactment, the Congressional Budget Office (CBO) estimated that CSP would cost \$2.0 billion over ten years. CSP is funded by the Commodity Credit Corporation.³ (For more detailed information on the CSP as authorized by the 2002 farm bill, see CRS Report RS21739.)

CSP Appropriations, FY2002-FY2005. During the 2002 farm bill debate, some raised concerns about the potential costs of CSP and the wisdom of devoting unlimited funding to a new, unproven program, but pressures to complete action on the farm bill overcame those concerns. CSP received no funding in FY2002. In 2003, CBO revised its estimate of CSP costs to \$6.8 billion over ten years, and the FY2003 Consolidated Appropriations Resolution limited spending for CSP to \$3.7 billion through FY2013 to pay for drought assistance.⁴ The FY2004 Consolidated Appropriations Act eliminated this ten-year cap but established an FY2004 CSP one-year funding limit of \$41.4 million.⁵

In March 2004, CBO revised its estimate of CSP costs to \$8.9 billion over 10 years (2005-2014), including \$282 million in spending in FY2005 alone. In October 2004, Congress limited CSP to \$6.037 billion from 2005 to 2014.⁶ This allowed appropriators to direct the resulting \$2.9 billion in budget savings to fund agricultural disaster assistance. The FY2005 Consolidated Appropriations bill, H.R. 4818, places a one-year limit on CSP of \$202.4 million (Division A, Title VII, §Section 741). (The FY2005 House Agriculture Appropriations bill (H.R. 4766) would have limited CSP to \$194 million in FY2005; the companion Senate bill, S. 2308, placed no limits on CSP.)

Administration Implementation of CSP. On January 2, 2004, NRCS published a proposed rule describing how it would prioritize the limited FY2004 funding. It proposed to implement CSP in certain watersheds on a rotating basis; to require producers to meet strict eligibility criteria; to sort producers’ applications into enrollment categories; and to reduce certain CSP payments.⁷ This proved controversial, since the farm bill included broad eligibility criteria and did not include prioritizing funds. NRCS received

¹ CSP includes three levels, or “tiers,” of participation that are capped at \$20,000, \$35,000, and \$45,000 annually. Tier I contracts last for five years; Tier II and Tier III contracts last for five to ten years.

² P.L. 107-171, §2001. In some NRCS programs, producers bid competitively by indicating their willingness to accept a lesser payment, increasing their chances that NRCS will accept their bid for a program contract.

³ The CCC, a wholly owned government corporation, is essentially the financing institution for the USDA’s farm price and income support programs and, more recently, conservation programs.

⁴ P.L. 108-7, Division N, Title II, §216.

⁵ P.L. 108-199, Division A, Title VII, §752.

⁶ Division B, §101, of the FY2005 Military Construction Appropriations bill (P.L. 108-324).

⁷ 69 FR 194.

over 20,000 specific comments on the proposed rule. On May 4, NRCS published a notice stating it would proceed with its proposed approach for the 2004 CSP signup, and detailed how it would select watersheds.⁸ NRCS also released a map identifying the 18 watersheds across the country in which farmers will be eligible for FY2004 CSP signups. To access the map, see [http://www.nrcs.usda.gov/programs/csp/2004_CSP_WS/watersheds04.html]. On June 21, 2004, NRCS published an interim final rule (69 FR 34502) finalizing its prioritization process for the 2004 CSP signup. NRCS accepted comments on the interim final rule through October 5, 2004, and is in the process of writing a final CSP rule.

Recent House and Senate Hearings. Both the Senate and the House have held hearings this year on CSP. During a May 11, 2004, hearing by the Senate Agriculture Committee's Forestry, Conservation, and Rural Revitalization Subcommittee, NRCS defended its proposed CSP implementation as a way to achieve environmental benefits within available funding (citing as program constraints both the FY2004 funding limit and a statutory provision limiting NRCS's "technical assistance" to producers to 15% of CSP annual funds).⁹ Congressional proponents strongly criticized NRCS's argument that the technical assistance limit would pose problems, and stressed that the program is not capped past FY2004. Witnesses from sustainable agriculture, commodity, livestock, and farmers' groups decried NRCS's plan to limit CSP spending by watersheds, though some agreed with NRCS that the FY2004 funding limit complicates CSP implementation. During a June 15, 2004, hearing by the House Agriculture Committee's Subcommittee on Conservation, Credit, Rural Development, and Research, the subcommittee chair noted NRCS's FY2004 funding predicament, and the subcommittee ranking member noted that CSP could cost billions of dollars in the future. Farmers' groups cited CSP's potential as a "green box" program as well. (See "Issues for Congress" at the end of this paper for a discussion of "green box" programs.)

Criteria Used in the FY2004 Enrollment Process

The FY2004 CSP enrollment process included strict eligibility criteria and prioritized CSP funding by watershed area and by enrollment categories. NRCS calls this approach "rewarding the best and motivating the rest," but critics feared strict requirements might dissuade farmers from participating.¹⁰ NRCS is now writing a final CSP rule, and it is not clear whether these criteria will be included in that rule or whether the FY2005 CSP signup will use them.

Producer Eligibility Requirements. The farm bill set fairly general guidelines for eligibility in the CSP. Producers must share in the risk of production, contribute to farm operations in a manner commensurate with revenues received, develop an approved Conservation Security Plan that details conservation activities to be implemented, and

⁸ 69 FR 24560.

⁹ "Technical assistance" refers to conservation planning, design, and implementation assistance that NRCS provides to producers, including assisting producers to enroll in NRCS programs.

¹⁰ Quote from Conservation Security Program Advance Notice of Proposed Rulemaking and Request for Comments, USDA/NRCS, 68 FR 7720.

sign a Conservation Security Contract. The June 2004 interim final rule requires further steps:

Producers Must Inventory Natural Resources. The interim rule requires producers to complete a self-assessment, including a “Benchmark Condition Inventory,” prior to applying to CSP. This details the type of agricultural operation, land uses, existing conservation practices, resource concerns, and the producer’s willingness to do additional conservation in the future. In the FY2004 signup, NRCS used this to determine the producer’s eligibility, place the producer in an enrollment category (see below), and determine appropriate CSP tier of participation. Producers also had to submit documents for 2002 and 2003 to show past stewardship, including fertilizer, pesticide and nutrient application schedules, tilling and grazing schedules.

Producers Must Treat Both Soil and Water. While the farm bill required producers to treat at least one resource under CSP, the interim final rule requires producers to treat two resources — soil and water quality — before applying to the program.¹¹ Additional eligibility criteria are included in NRCS’s June 21, 2004 sign-up notice.

CSP Applications Prioritized. The June 2004 interim final rule established two methods of prioritizing applications, neither of which was mentioned in the farm bill statute. The first includes ranking watersheds nationwide by various criteria and selecting certain of those watersheds to be eligible for CSP. The second involves placing applications into various “enrollment categories” based on the applicant’s current conservation efforts and willingness to do additional conservation.

Criteria for Selecting Eligible Watersheds. For the 2004 signup, NRCS ranked over 2,000 watersheds nationwide, based on concentrations of eligible land uses; intensity of pesticide, fertilizer, and manure use; and prevalence of historic and recent conservation efforts. Once watersheds were ranked, NRCS prioritized them further by selecting 18 watersheds it considers to be “improving” according to these criteria. It is unclear why NRCS chose to prioritize in this fashion, or whether NRCS will prioritize similarly in future years. Critics argue that this approach will not reward those producers who are practicing the best conservation. A map of watersheds eligible for the FY2004 signup is at [http://www.nrcs.usda.gov/programs/csp/2004_CSP_WS/watersheds04.html]. The same process was presumably used to determine the FY2005 watersheds, and a map of these is at [http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html]. NRCS has estimated that it will take eight years for CSP to rotate through all US watersheds.¹²

NRCS Places Applications in Enrollment Categories. The June 21 sign-up notice lays out eight separate enrollment categories (“A” through “H”) for each type of eligible land — rangeland, pasture, and cropland (cropland categories also cover orchards, vineyards, horticultural crops, and hay land). Applicants’ current conservation and

¹¹ According to the NRCS, determining soil quality involves evaluating the amount of organic matter in the soil, its fitness as a seedbed, and other factors. Assessing water quality involves evaluating the level of pesticides, nutrients, turbidity or other contaminants in water.

¹² Notice, “Conservation Security Program,” NRCS, 69 FR 24560.

willingness to perform additional conservation were also a factor; any applicant unwilling to perform additional conservation was placed in category “H,” the lowest priority for funding. While all applications that qualify would be placed in an enrollment category, categories were funded nationally in priority order (beginning with category “A”) until funding was exhausted. The notice also specifies subcategories for funding if all applications in a category cannot be funded.

Sign-Ups Are Periodic, Not Continuous. The interim final rule opens CSP for sign-ups only at certain times, rather than continuously, as is the case with some CSP programs. The farm bill did not specify whether sign-ups were to be continuous or periodic.

Three Types of CSP Contract Payments. The CSP contract payment is by statute composed of three components: stewardship payments,¹³ payments for new and existing practices, and payments for enhancement activities that go beyond minimum contract requirements. The farm bill limits total contract payments to \$20,000 for a Tier I contract, \$35,000 for a Tier II contract, and \$45,000 for a Tier III contract. However, NRCS has further limited the total contract payment to a percentage of the stewardship payment. This latter limit was not mentioned in the farm bill.¹⁴

Stewardship Payment. This is a payment tied to the number of acres enrolled in CSP. The farm bill sets the stewardship payment component at 5%-15% of land rental rates, depending on the tier of the contract. The interim final rule reduced this to 0.25%-0.75%, significantly reducing this part of the CSP payment.

Payments for New and Existing Practices. The farm bill restricts payments for new and existing practices to not more than 75% of the practice cost (this rises to 90% for beginning farmers and ranchers). Under the farm bill, CSP cannot pay for some practices, such as animal waste treatment facilities. The June 21 sign-up notice specified which practices are eligible. Existing practice payments will be 25% of the stewardship payment, and new practice payments will be cost-shared at not more than 15%.

Enhancement Payments. The farm bill lists five activities a participant can carry out that qualify for enhancement payments, including implementing multiple conservation practices; addressing local conservation priorities; participating in on-farm research; participating in a watershed or regional conservation plan; and assessing and evaluating conservation activities. The interim final rule specified only two types of enhancement components as “available” in the FY2004 sign-up. It is unclear why NRCS has chosen this approach in the rule.

¹³ These are called “base payments” in the farm bill, but NRCS has renamed them “stewardship payments” in response to comments that the term “base” could lead to confusion with “base acres” used in farm programs.

¹⁴ In the interim final rule, NRCS limits the total contract payments to 15%-40% of the unadjusted stewardship payment, depending on the tier of participation.

Issues for Congress

A central issue for Congress is whether NRCS's implementation of CSP is consistent with congressional intentions. On one hand, congressional authorizers crafted CSP as an entitlement program with unlimited funding; on the other, congressional appropriators have since limited that funding. Authorizers specified broad eligibility criteria in the farm bill, but due to funding limits NRCS created strict procedures that applicants must follow in order to qualify. NRCS argues that because the farm bill placed a statutory 15% limit on CSP technical assistance, CSP implementation will be constrained. Congressional CSP proponents have disputed this. The interim final rule also placed further limits on CSP payments that were not envisioned in the farm bill.

Congress may also be interested the basis for NRCS's selected eligible watersheds and enrollment categories. The May 4 notice described a complex watershed selection procedure in which NRCS ranks watersheds in several ways before prioritizing them. It is not a transparent process, and consequently it is unclear precisely how NRCS selected the 18 watersheds eligible for FY2004 or the 202 watersheds eligible for FY2005.

Another issue for Congress may be CSP's potential status as a "green box" program under the World Trade Organization (WTO) structure. In WTO parlance, "green box" programs (which pay producers for environmental services) are not subject to reductions under the WTO. CSP spending appears likely to be classified as a "green box" program. Given that the United States and other countries have proposed to reduce direct subsidies, some view "green box" programs like CSP as the type of farm support most likely to survive future international negotiations (particularly in light of the June 19 WTO decision, which ruled that U.S. cotton support payments are unfair to Brazilian cotton producers and artificially lower the world price of cotton). Some witnesses for the House Agriculture subcommittee hearing noted CSP's "green box" potential as a possible advantage to the program.