

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1470**

RIN 0578-AA43

**Conservation Stewardship Program**

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** Section 2301 of the Food, Conservation, and Energy Act of 2008 (2008 Act) amended the Food Security Act of 1985 to establish the Conservation Stewardship Program (CSP). On July 29, 2009, the Natural Resources Conservation Service (NRCS) published an interim final rule for CSP with a 60-day public comment period. On September 21, 2009, the public comment period was extended 30 days. NRCS is publishing a final rule that addresses the comments received on the interim final rule and makes other minor adjustments to improve clarity of the rule.

**DATES:** *Effective Date:* The rule is effective June 3, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Dwayne Howard, Branch Chief, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250; Telephone: (202) 720-1845; Fax: (202) 720-4265; or e-mail [CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:****Regulatory Certifications***Executive Order 12866*

Pursuant to Executive Order 12866 (FR Doc. 93-24523, September 30, 1993), this final rule is an economically significant regulatory action since it results in an annual effect on the economy of \$100 million or more. The administrative record is available for public inspection at the Department of Agriculture, 1400 Independence Avenue, SW., Room 5242 South Building, Washington, DC 20250.

Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the Regulatory Certifications section of this preamble and a copy of the analysis is available upon request from Dwayne Howard, Branch Chief, Financial Assistance Programs Division,

Department of Agriculture, Natural Resources Conservation Service, Room 5237 South Building, Washington, DC 20250 or electronically at <http://www.nrcs.usda.gov/programs/csp/> under the *CSP Rules and Notices with Supporting Documents* title.

*Regulatory Flexibility Act*

NRCS has determined that the Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

*Environmental Analysis*

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). A programmatic environmental assessment was prepared in association with the CSP interim final rule. The analysis determined that there was not a significant impact to the human environment and as a result an Environmental Impact Statement was not required to be prepared (40 CFR part 1508.13). The EA and FONSI were available for review and comment for 30 days from the date the interim final rule was published in the **Federal Register**.

For this final rulemaking, the agency has determined that there are no new circumstances or significant new information that has a bearing on environmental effects which warrant supplementing the previous EA and FONSI. The proposed changes identified in this final rule are considered minor changes that should be implemented for the program. The majority of these changes are administrative or technical or corrections to the regulation.

Copies of the EA and FONSI may be obtained from Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6151 South Building, Washington, DC 20250. The CSP EA and FONSI are also available at the following Internet address: [http://www.nrcs.usda.gov/programs/Env\\_Assess](http://www.nrcs.usda.gov/programs/Env_Assess).

*Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis (CRIA) that the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The final CRIA provides responses to the interim final rule's CRIA comments. The Department of Agriculture (USDA), Office of Assistant

Secretary for Civil Rights (OASCR), Office of Compliance, Policy, and Training (formally the Office of Adjudication and Compliance) worked with NRCS in the initial preparation of the proposed interim final rule and CRIA. Based on these preliminary meetings and their review, it was determined there was no adverse impact. The OASCR concurred with the CRIA for the proposed final rule.

The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including CSP, will continue to be administered in a non-discriminatory manner. 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. CSP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the CSP rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

*Paperwork Reduction Act*

Section 2904 of the 2008 Act provides that the promulgation of regulations and the administration of Title II of the 2008 Act, which contain the amendments that authorize CSP, will be made without regard to chapter 35 of Title 44 of the U.S.C. also known as the Paperwork Reduction Act. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

*Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

*Executive Order 12988*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this final rule are not retroactive. The provisions of this final rule preempt State and local laws to the extent that such laws are inconsistent with this

final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

*Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*

Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, requires that a risk assessment be prepared in conjunction with any notice of proposed rulemaking for a major regulation. Pursuant to section 2904 of the 2008 Act, NRCS is promulgating this final rule, and therefore, a risk assessment is not required. However, risks associated with the final rule have been assessed pursuant to the analysis prepared in compliance with Executive Order 12866.

*Unfunded Mandates Reform Act of 1995*

NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

*Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this final rule conforms with the Federalism principles set forth in the Executive Order, would not impose any compliance costs on the States, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this final rule does not have Federalism implications.

*Executive Order 13175*

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule on Indian tribal governments and concluded that this final rule will not negatively affect Indian tribal governments or their communities. The rule neither imposes substantial direct compliance costs on tribal governments nor preempts tribal law. However, NRCS plans to undertake a series of at least six regional tribal

consultation sessions before December 30, 2010, on the impact of NRCS conservation programs and services on tribal governments and their members to establish a baseline of consultation for future actions. Reports from these sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. NRCS will respond in a timely and meaningful manner to all tribal governments' requests for consultation.

*Small Business Regulatory Enforcement Fairness Act of 1996*

Section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of title 5 U.S.C., which allows an agency to forgo the Small Business Regulatory Enforcement Fairness Act of 1996 usual congressional review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs authorized or amended by Title II in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the **Federal Register**.

*Section 2708 of the 2008 Act*

Section 2708, "Compliance and Performance," of the 2008 Act added a paragraph to section 1244(g) of the Food Security Act of 1985 Act entitled, "Administrative Requirements for Conservation Programs," which states the following:

"(g) Compliance and performance.— For each conservation program under Subtitle D, the Secretary will develop procedures—

- (1) To monitor compliance with program requirements;
- (2) To measure program performance;
- (3) To demonstrate whether long-term conservation benefits of the program are being achieved;
- (4) To track participation by crop and livestock type; and
- (5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004)."

This new provision presents in one place the accountability requirements placed on the agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve Program, Conservation Security Program, Conservation Stewardship

Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program (GRP), Environmental Quality Incentives Program (EQIP) (including the Agricultural Water Enhancement Program), Wildlife Habitat Incentive Program (WHIP), and Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the Food Security Act of 1985 Act and the agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the Food Security Act of 1985, and agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the agency accountability requirements as outlined in section 1244(g) of the Food Security Act of 1985.

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants meet eligibility requirements and follow-up procedures to ensure that participants are complying with the terms and conditions of their contractual arrangement with the government and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies are set forth in agency guidance (Conservation Programs Manual\_440\_Part 512 and Conservation Programs Manual\_440\_Part 508) (<http://directives.sc.egov.usda.gov/>). The program requirements applicable to participants that relate to compliance are set forth in these regulations in § 1470.6 "Eligibility requirements," § 1470.21 "Contract requirements," § 1470.22 "Conservation stewardship plan," and § 1470.23 "Conservation activity operation and maintenance." These sections make clear the general program eligibility requirements, participant obligations for implementing a conservation stewardship plan, contract obligations, and requirements for operating and maintaining CSP-funded conservation activities.

*Measure program performance.* Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by Office of

Management and Budget Circular A-11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools, and the information is available to the public at <http://ias.sc.egov.usda.gov/PRSHOME/>. Program performance is also reported annually to Congress and the public through the annual performance budget, annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in agency guidance (GM\_340\_401 and GM\_340\_403) (<http://directives.sc.egov.usda.gov/>).

The conservation actions undertaken by participants are the basis for measuring program performance; specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants that relate to undertaking conservation actions are set forth in these regulations in § 1470.21 “Contract requirements,” § 1470.22 “Conservation stewardship plan,” and § 1470.23 “Conservation activity operation and maintenance.” These sections make clear participant obligations for installing, adopting, improving, maintaining, and managing conservation stewardship activities which in aggregate result in the program performance that is reflected in agency performance reports.

Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource condition. While NRCS captures many measures of “output” data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes.

NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation

programs.<sup>1</sup> In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through agency field-level business tools to help produce estimates of environmental effects accomplished through agency programs, such as CSP. In 2006 a Blue Ribbon panel evaluation of CEAP<sup>2</sup> strongly endorsed the project’s purpose but concluded “CEAP must change direction” to achieve its purposes. In response, CEAP has focused on priorities identified by the panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status, is available at <http://www.nrcs.usda.gov/technical/NRI/ceap/>. Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. The NRI and assessment and the performance measurement and reporting policies are set forth in agency guidance (GM\_290\_400, GM\_340\_401, and GM\_340\_403) (<http://directives.sc.egov.usda.gov/>).

Demonstrating the long-term conservation benefits of conservation programs is an agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under each of its programs. The CSP program requirements applicable to participants that relate to producing long-term conservation benefits are located in § 1470.21 “Contract requirements,” § 1470.22 “Conservation stewardship plan,” and § 1470.23 “Conservation activity operation and maintenance.” These requirements and related program management procedures supporting program implementation are set forth in agency guidance (Conservation Programs Manual 440\_Part 512 and Conservation Programs Manual \_440\_Part 508).

<sup>1</sup> The exception to this is the CRP; since 1987 the NRI has reported acreage enrolled in CRP.

<sup>2</sup> Soil and Water Conservation Society. 2006. Final Report from the Blue Ribbon Panel Conducting an External Review of the US Department of Agriculture Conservation Effects Assessment Project. Ankeny, IA: Soil and Water Conservation Society. This review is available at <http://www.nrcs.usda.gov/technical/NRI/ceap/>.

*Coordinate these actions with the national conservation program authorized under the Soil and Water Resources Conservation Act (RCA).* The 2008 Act reauthorized and expanded on a number of elements of the RCA related to evaluating program performance and conservation benefits. Specifically, the 2008 Act added a provision stating:

“Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation.”

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in agency guidance (GM\_290\_400 and GM\_130\_402) (<http://directives.sc.egov.usda.gov/>).

The coordination of the previously described components with the RCA is an agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. Thus, as the Secretary proceeds to implement the RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the Food Security Act of 1985.

#### *Economic Analysis—Executive Summary*

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS conducted a cost-effectiveness analysis (CEA) of the CSP as formulated for the interim final rule.

This CEA describes how CSP financial assistance and technical assistance are made available to farmers and ranchers who agree to install and adopt additional conservation activities; and improve, maintain, and manage conservation activities in place in accordance with CSP’s objectives. The CEA compares the impact of these activities in generating environmental benefits with program costs. Many of these improvements can produce beneficial impacts concerning onsite

resource conditions (such as conserving soil) and significant offsite environmental benefits (such as cleaner water, improved air quality, and enhanced wildlife habitat).

The environmental outcomes expected to be generated by enhancement activities are based on extrapolations of the environmental outcomes that have been studied and associated with many traditional NRCS conservation practices. While the outcomes from many traditional conservation practices have been assessed, the impacts generated from these enhancements are not as well studied. In conducting economic analyses where benefits are not well understood or difficult to measure, but activity costs are available, the traditional benefit-cost analysis is generally replaced with a CEA, the approach used for both this assessment and the interim final rule.

In considering alternatives for implementing CSP, NRCS followed the legislative intent to establish a clear and transparent method to determine in an open and participatory process, potential participants' current and future levels of conservation stewardship in order to gauge their environmental impacts and compare them. Because CSP is voluntary, the program is not expected to impose any obligation or burden upon agricultural producers and nonindustrial private forestland (NIPF) owners who choose not to participate.<sup>3</sup>

Congress authorized the enrollment of 12,769,000 acres for each fiscal year (FY) for the period beginning October 1, 2008, through September 30, 2017. For FY 2009 through FY 2012, CSP has been authorized 51,076,000 acres (4 years multiplied by a 12,769,000 acre program cap per year).

Total program costs for CSP are shown in Table 1. Full participation is

assumed for each of the 4 years CSP is offered, and the duration of each contract is 5 years. Total costs include only costs to the government.<sup>4</sup> Cumulative program costs for four program ranking periods are estimated to be \$2.990 billion in constant 2005 dollars, discounted at 7 percent. At a 3 percent discount rate, program costs increase to \$3.520 billion in constant 2005 dollars.

The information in Table 1 highlights the cumulative impacts of four ranking periods and 5-year contracts. Each sign-up creates a commitment of \$229.842 million for 5 years. Participants in the initial ranking period receive payments through FY 2014; participants in the last ranking period receive payments through FY 2017. The largest outlays of program funds occur in FY 2013 and FY 2014 and then begin to taper off as contracts from the first and later ranking periods end.

TABLE 1—TOTAL PROGRAM COSTS OF CSP, FY 2010 TO FY 2017

	Yearly cost <sup>1</sup> (million \$)	GDP price deflator <sup>2</sup> (chained, 2005=100)	Yearly cost in constant dollars <sup>1</sup> (million \$)	Discount factors for 3%	Present value of costs – 3% (million \$)	Discount factors for 7%	Present value of costs – 7% (million \$)
FY10 .....	229.842	108.5	211.836	0.9709	205.666	0.9346	197.978
FY11 .....	459.684	110.1	417.515	0.9426	393.548	0.8734	364.674
FY12 .....	689.526	111.3	619.520	0.9151	566.949	0.8163	505.713
FY13 .....	919.368	113.1	812.881	0.8885	722.234	0.7629	620.143
FY14 .....	919.368	115.6	795.301	0.8626	686.034	0.7130	567.039
FY15 .....	689.526	118.1	583.849	0.8375	488.965	0.6663	389.043
FY16 .....	459.684	120.7	380.848	0.8131	309.665	0.6227	237.173
FY17 .....	229.842	123.4	186.258	0.7894	147.034	0.5820	108.404
Total .....	4596.840	.....	4008.008	.....	3520.093	.....	2990.166

<sup>1</sup> Congress set a maximum acreage limit of 12,769,000 acres and a national average payment rate of \$18 per acre.

<sup>2</sup> USDA Agricultural Projections to 2019. Office of the Chief Economist, World Agricultural Outlook Board, U.S. Department of Agriculture. Prepared by the Interagency Agricultural Projections Committee. Long-term Projections Report OCE–2010–1, page 15.

### Methodology Employed in This Study

Many conservation practices have been extensively studied, but similar studies pertaining to enhancement activities have not been conducted. We do not have sufficiently detailed, site-specific information on existing conservation practices and environmental outcomes. As a result, estimation of a true baseline of environmental conditions before and after CSP implementation is not possible.

The methodology employed in this final assessment is the same methodology applied in the interim final rule except that data from the initial CSP ranking period are

substituted for the representative farm and environmental data. Although instructive in identifying possible outcomes of different formulations of CSP, actual enrollment and contract data are necessary to provide a fuller assessment of CSP outcomes. A relative comparison of results from the interim final rule and the final rule was also conducted to identify differences between predicted and actual outcomes, determine why differences were observed, and make recommendations, when necessary, to improve CSP's cost effectiveness. This comparison should not be used beyond its stated purpose because of different data sets in the two analyses.

### CSP and the Conservation Measurement Tool

CSP is a challenging program given its purpose, statutory mandates, assessments of existing and future conservation activities and their associated conservation indices, allocation of program funds and acres across States, and price setting. The following are key elements about CSP and the conservation measurement tool (CMT).

(a) NRCS allocated acreage for enrollment across States according to each State's proportion of the Nation's agricultural land base.

(b) NRCS State offices created ranking pools, selected three to five priority

to producers in adopting new activities or past activities.

<sup>3</sup> An impact could be expected in cases where CSP funds activities that lead to large increases of certain environmental services and goods where those markets are beginning to get started.

<sup>4</sup> Given the wide set of possible initial resource conditions and conservation activities likely to be adopted, it is not possible to ascertain whether (or to what extent) CSP payments offset expected costs

resource concerns for every pool, and allocated acres and program dollars from the national office across the pools.

(c) A national team of NRCS cropland, pastureland, rangeland, and forest land specialists developed sets of questions by land use category to identify conservation activities already applied to the land and the associated level of stewardship by assigning conservation performance points. The team also identified additional enhancements for increasing stewardship and assigned conservation performance points to the additional enhancements. NRCS' Conservation Practice Physical Effects methodology was used in both of these instances to assign performance points. Conservation performance points earned by land use should be viewed as "environmental indices."

(d) NRCS developed a CMT to determine eligibility by verifying that minimum stewardship thresholds were met, estimating conservation performance from existing and additional activities, and ranking applications.

(e) NRCS field staff tested the questions and the CMT and made suggestions that improved CMT's use.

(f) During the initial ranking period, NRCS assisted producers in completing their resource inventories in the CMT and determining program eligibility. Eligible applicants identified additional activities—enhancements and traditional conservation practices—they were willing to adopt. Each applicant's resource inventory and additional activities recorded in the CMT earned conservation performance points per acre by land use.

(g) Every application was ranked within a pool according to the sum of four equally weighted ranking factors. The maximum ranking score is 1,000; the minimum zero. NRCS selected applications for enrollment beginning with the highest ranked one and worked down the ranked list until a pool's funding limit or acreage limit was reached. A fifth ranking factor came into play as a "tie breaker" when two or more applications were ranked equally. When this situation occurred, the application that minimized the cost to government was selected.<sup>5</sup> The four equally weighted ranking factors are below:

(1) Ranking factor one measures the existing level of conservation stewardship for *priority* resource concerns at the time of enrollment.

(2) Ranking factor two measures the *degree* that new conservation activities improve *priority* resource concern conditions.

(3) Ranking factor three measures the *number of priority* resource concerns the applicant agrees to meet during the contract period.

(4) Ranking factor four measures the *degree* that new conservation activities improve *other* resource concern conditions.

(h) CSP payment per land use equals conservation performance points per acre multiplied by acres multiplied by the land use payment rate. Total payment per contract equals the sum of the individual land use payments.<sup>6</sup>

(i) The four policy options used in the interim final rule are also used in the final rule to identify tradeoffs among the policy options, especially changes in program acres, conservation performance points, program costs, and implications with respect to CSP's acreage and funding constraints.

Detailed descriptions of CSP, CMT, ranking period results, and CEA analysis can be found in the main body of the report and the appendices.

### Analysis

Results of this analysis show that CSP participation was high across the nation. As of December 1, 2009, NRCS had classified 15,015 applications as eligible. These applications involved slightly more than 20.8 million acres, close to double CSP's maximum allowable of 12.179 million acres.<sup>7</sup>

Some concerns were raised regarding participation in ranking pools. No applications were received in 250 of the 693 pools created for CSP. NRCS found that the majority of these pools were established specifically for conservation access by beginning farmers or ranchers and socially disadvantaged farmers or ranchers. All eligible applications were preapproved in 303 ranking pools because allotted acreage and funding allocations were not fully committed. The remaining 140 pools accounted for slightly more than 86 percent of eligible acres, making them highly competitive.

More than 80 percent of the eligible applicants across all land uses were already meeting and frequently exceeding minimum stewardship levels on five of the eight resource concerns.

<sup>6</sup> For CSP ranking period one, payment rates are \$0.0605 for every cropland conservation performance point, \$0.0329 for pasture, \$0.0120 for rangeland, and \$0.0164 for NIPF.

<sup>7</sup> To avoid enrolling too many acres or spending more than the \$230 million available for this first ranking period, NRCS initially allocated 95 percent of the 12.769 million acres. As enrollment progressed, NRCS allocated the remaining acres.

Applicants in the initial CSP ranking period appear to be practicing stewardship at a fairly high level. As a result, one would expect to see conservation performance points earned for existing activities to be higher than performance points earned for additional activities. Summary data from pre-approved applications in the initial ranking period confirm this expectation. Existing conservation performance points amounted to 61 percent of total points awarded nationally. This 61–39 percent split between existing and additional conservation performance points carried directly over into payments, with 63 percent of projected \$142.6 million in financial assistance tied to existing activities.

The policy options described and analyzed using representative farm and environmental data in the interim final rule indicated that CSP outcomes could be fine-tuned at the national level by changing the relative importance of the ranking factors. Based on that analysis, policy option 1 (four ranking factors were weighted equally) was selected and used for the initial CSP ranking period. Because three of the four ranking factors are linked directly to additional activities, an equal weighting scenario places considerable importance on additional activities—enhancements and traditional conservation practices—proposed to be applied over a 5-year period. The expectation was that the highest ranked applications would include substantially more additional conservation activities than lower ranked applications. One of the other policy options might be used to influence the mix between existing and additional activities after reviewing actual CSP enrollment.

The five policy options and their reported acreage and program costs by land use are summarized in Table 2. Policy option 1 represents the actual CSP ranking period where the ranking factors are equally weighted. Analyses conducted for policy option 2 (ranking factor 1 receives 5 times the weight—62.5 percent—of the other ranking factors), policy option 3 (ranking factor 2 receives 5 times the weight—62.5 percent—of the other ranking factors), policy option 4 (ranking factor 3 receives 5 times the weight—62.5 percent—of the other ranking factors), and policy option 5 (ranking factor 4 receives 5 times the weight—62.5 percent—of the other ranking factors) did not appreciably change the percentage splits between existing and additional performance points and funding. Though acres and costs shifted among the different land uses, the

<sup>5</sup> \* \* \* the Secretary shall rank applications based on \* \* \* (E) the extent to which the actual and anticipated environmental benefits from the contract are provided at the least cost relative to other similarly beneficial contract offers."

impact on total program costs and costs through 5 did not substantially change acres under policy option 1, which was per acre suggests that policy options 2 the current distributions of funds and used for the initial CSP ranking period.

TABLE 2—SUMMARY OF PROGRAM ACREAGE AND COSTS BY LAND USE AND POLICY OPTIONS FOR CSP SIGN-UP ONE

Policy Option	Cost per acre	Acres funded in program <sup>a</sup>					Total program cost <sup>b</sup>				
		Crop land	Pasture	Range land	NIPF	Total <sup>2</sup>	Crop land	Pasture	Range land	NIPF	Total
		(millions of acres)					(\$ millions)				
No CSP .....	N/A	0	0	0	0	0	0	0	0	0	0
PO-1 .....	\$14.82	4.833	0.797	5.529	1.019	12.179	117.308	14.30	38.90	9.96	180.48
PO-2 .....	14.79	4.570	0.792	5.568	0.985	11.914	112.988	6	9	3	6
PO-3 .....	14.66	4.752	0.786	5.204	0.951	11.694	110.659	14.33	39.16	9.68	176.16
PO-4 .....	14.88	4.726	0.773	5.452	1.004	11.955	115.581	2	2	7	9
PO-5 .....	15.27	4.949	0.757	5.097	0.950	11.753	120.171	14.36	37.08	9.36	171.47
								4	3	7	2
								14.36	38.41	9.86	177.85
								8	5	6	0
								13.83	36.13	9.32	179.46
								6	7	1	5

<sup>a</sup> For this analysis, the CSP acreage cap is 12.179 million acres including the 10 percent allocated to NIPF. This was the initial allocation distributed to States shortly after closure of the initial CSP ranking period.  
<sup>b</sup> Includes financial and technical assistance.

NRCS noticed some large operations fell just below the cutoff line in many of the pools for policy option 1, the actual ranking period. These operations moved up the ranked list and effectively prevented the distribution of the full amount of acres under the other policy options. Their impact can be seen by examining the total acres in Table 2.

In examining the summaries of conservation performance points and costs per point, the agency reached a similar conclusion regarding the effectiveness of policy options 2 through 5 in changing the emphasis of CSP between existing and additional activities (see Table 3). The relatively insignificant changes in total conservation performance points and

dollars per point suggest that significant changes in the ranking process yield few tangible results in practice. A closer examination of the applications show considerable shifting of the applications in terms of rankings, but few of the applications that were ranked low during the actual ranking period moved up the list to the level of approval.

TABLE 3—SUMMARY OF CONSERVATION PERFORMANCE POINTS AND COST PER POINT FOR CSP POLICY OPTIONS

	Existing activities	Additional activities	Total points	Dollars per point	
				Additional activities	All activities
	(millions of conservation performance points)			(\$)	
No CSP <sup>a</sup> .....	Indeterminate	N/A	N/A	N/A	N/A
PO-1 .....	3,960	2,488	6,448	0.0573	0.0221
PO-2 .....	3,964	2,368	6,332	0.0590	0.0220
PO-3 .....	3,779	2,502	6,281	0.0564	0.0225
PO-4 .....	3,920	2,398	6,319	0.0587	0.0223
PO-5 .....	3,790	2,481	6,271	0.0576	0.0228

<sup>a</sup> Assumes CSP is not available to landowners. Data are not available to assess this situation.  
<sup>b</sup> Indeterminate.

Other possible reasons were identified to explain why the ranking process produced such minor shifts in conservation performance points and funding between existing and additional activities. Applicants, for example, who were addressing a State's priority resource concerns received more ranking points than applicants who chose to address fewer priority resource concerns. As part of the policy analysis, it became apparent that ranking factor 3 moved closely with ranking factor 1. A recommendation in the conclusions and recommendations section breaks this relationship with ranking factor 1, making it strictly a factor that awards ranking points based on proposed new

activities that assist producers in meeting minimum stewardship levels of priority resource concerns. Another possible reason is the CMT and how activities and conservation performance points are assigned. An additional reason is the ranking process itself. Modifications to account for these two reasons are detailed in the recommendations. The results reported above and other secondary results from the analysis of eligible applications and preapproved contracts in CSP's initial ranking period substantiate many of the initial CEA findings reported in the interim final rule. One primary finding was that the policy constraints on the program posed

serious challenges for the model developers. It is obvious that these constraints will pose similar challenges in implementing this program. In particular, achieving the national annual acreage enrollment goal at the designated average costs per acre mandated in legislation will be a challenge given the heterogeneity of producers' initial resource conditions and demand for enhancements. This cautionary observation held true in the initial ranking period and appears to be a major concern in subsequent ranking periods. Second, the annual contract limit of \$40,000 per contract imposed by the interim final rule influences program

outcomes. CSP gains program acreage when large operations, 13.8 percent of the preapproved contracts in the first ranking period, hit the maximum annual payment limit and remain enrolled. Costs per acre for the program decrease because program funding is spread over more acres. As predicted though, CSP's acre constraint of 12.769 million acres becomes the controlling factor because of the acres linked to the large operations. Though NRCS received an apportionment of \$229,842,000, the financial assistance portion cannot be fully spent because the acreage constraint was met for the initial CSP ranking period. Furthermore, NRCS offices incur technical assistance costs associated with these additional acres, regardless if the acres are capped for payment.

Third, the policy options that were part of the CEA in the interim final rule proved useful in the final assessment. The different policy scenarios reinforced the fact that CSP outcomes depend to a large extent on the applications submitted for enrollment. The policy scenarios also contributed to a better understanding of how the ranking factors were defined and implemented.

Finally, program design and adaptive program management are critical in satisfying the mandated constraints of this program. The model results of the CEA used in the interim final rule showed that caution must be used in setting land use payment rates. This is due to the changing land use compositions and conservation performance outcomes that resulted under each alternative policy option. Such changes could be expected in subsequent ranking periods and alter the acreage and conservation performance points produced. Such changes would need to be included in the calculation of appropriate land use payment rates that conform to the CSP statute, particularly the \$18 per acre national program cost constraint.

### Conclusions and Recommendations

As part of the 2008 Act, Congress created the CSP and instructed the Secretary of Agriculture to develop a program that compensates a producer for " \* \* \* installing and adopting additional conservation activities; and improving, maintaining, and managing conservation activities in place at the operation of the producer at the time the contract offer is accepted by the Secretary." Producers must also meet minimum stewardship levels before they become eligible for CSP. Acreage, budget, a national average price of \$18 per acre, and a maximum annual

payment of \$40,000 per contract established in the interim final rule also complicate program implementation.

The CSP as currently implemented received more than enough applications to make it a competitive program. Of the 15,015 eligible applications, 10,743 were preapproved for enrollment, and those selected were the highest ranked eligible applications. The preapproved applications resulted in 61–39 percent split in conservation performance points and 63–37 percent split in program payments between existing and additional activities, respectively. The acreage constraint limited the ability of NRCS to distribute all the funds provided by Congress.

Though little guidance is given on a suitable split of financial assistance funds between existing and additional conservation activities, preliminary analysis indicates that the initial CSP ranking period attracted practicing conservationists. Almost every applicant met the stewardship threshold requirement at the time of application. More than 80 percent of the applicants were meeting five resource concerns at time of application. The \$40 thousand cap per contract and the requirement that all acres of an operation must be enrolled impacted CSP. The acreage constraint became the limiting factor because 1,487 (13.8 percent) preapproved applications exceeded the cap, but their acres were counted, making it impossible for NRCS to distribute all the funds.

A total of five policy options were developed as candidates for improving CSP's overall cost effectiveness at the national level. These policy options are directly tied to CSP's ranking process. Under policy option 1, the four ranking factors are equally weighted. In the remaining options, each ranking factor is separately weighted five times more important than the other factors. Based on the interim analysis, the ranking process recommended and implemented for the first CSP sign-up was policy option 1. This translated into an effective weighting scheme of 25 percent for existing activities and 75 percent for additional activities.

For the most part, these policy options exhibited their intended impacts. With each change in the weights assigned to the ranking factors, ranking scores changed, and applications moved up and down in ranking based on their mix of existing and additional conservation activities and whether priority resource concerns were being targeted. With five times the weight assigned to ranking factor 1 (policy option 2), for example, NRCS observed applications with many

existing practices earning more ranking points than applications with fewer existing practices and applications with similar additional activities. When weights were assigned to ranking factors that captured additional activities, NRCS observed the opposite. Applications with many additional activities ranked higher than applications with a similar complement of existing activities and applications with fewer additional activities. Overall, policy options 2 through 5 did not yield substantially different changes in conservation performance points and financial assistance between existing and additional activities. Analysis of the data suggests that this initial CSP ranking period attracted practicing conservationists. NRCS expects future ranking periods to be more representative of the larger agricultural sector as others learn about CSP and the remaining population of practicing conservationists yet to enroll declines with each ranking period.

There is insufficient evidence of improved cost effectiveness to replace policy option 1 with any of the other options. Prior to CSP ranking period two, NRCS will review key program components—eligibility requirements, minimum stewardship levels, conservation activities and conservation performance points, CMT, and ranking factor specifications—and make any necessary modifications. In addition, NRCS will investigate other ranking factor processes, additional ranking criteria, and separate prices for existing and additional conservation performance points. As data becomes available and is analyzed from each new ranking period, NRCS will make necessary changes to improve CSP's cost effectiveness.

### Discussion of Program

The 2008 Act amended the Food Security Act of 1985 to establish the CSP and authorize the program in fiscal years 2009 through 2012. The CSP statute provides that the Secretary will carry out a stewardship program to encourage producers to address resource concerns in a comprehensive manner by (1) undertaking additional conservation activities, and (2) by improving, maintaining, and managing existing conservation activities. On July 29, 2009, NRCS published an interim final rule for CSP with a 60-day public comment period. On September 21, 2009, the public comment period was extended 30 days.

NRCS explained in the preamble of the interim final rule, that it will provide financial and technical assistance to eligible producers to

conserve and enhance soil, water, air, and related natural resources on their land. Eligible lands include cropland, grassland, prairie land, improved pastureland, rangeland, NIPF, agricultural land under the jurisdiction of an Indian tribe, and other private agricultural land (including cropped woodland, marshes, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed.

The NRCS State Conservationist, in consultation with the State Technical Committee and local working groups, will focus program impacts on natural resources that are of specific concern for a State, or the specific geographic areas within a State. Applications will be evaluated relative to other applications addressing similar priority resource concerns to facilitate a competitive ranking process among applicants who face similar resource challenges. The program is national in scope, and participation is voluntary.

CSP provides participants with two possible types of payments: (1) Annual payments will be offered through split-rate payments; one payment for installing and adopting additional activities, and one for improving, maintaining, and managing existing activities. This payment structure is different from the annual payments offered for contracts selected in the 2009 enrollment period. Contracts selected in the 2009 enrollment period will receive an annual payment that combines the conservation performance from additional and existing conservation activities. Annual payments may also include compensation for on-farm research and demonstration activities or pilot testing, and (2) Supplemental payment for the adoption of resource-conserving crop rotations on cropland.

The 2008 Act directed the development of the CMT to estimate the level of environmental benefit to be achieved by a producer in implementing conservation activities. NRCS successfully implemented the CMT during its first sign-up. The CMT effectively evaluated the stewardship threshold requirements, estimated conservation performance, generated a ranking score, and calculated conservation performance payment points. Preliminary data analysis showed the CMT fairly evaluated conservation performance on different sizes and types of operations, across different land uses, for all regions of the country. Although the tool performed well, NRCS recognized that improvements were necessary to improve clarity of the questions being

asked of clients. Therefore, NRCS assembled a team of technical experts to analyze the questions in the CMT that could be misunderstood, identify those needing adjustment, and provide recommendations to the Chief.

NRCS designed the program to recognize excellent stewards and deliver valuable new conservation on every CSP contract. The agency developed multiple program features to enable it to realize this objective, including:

(1) Bundling enhancements to encourage participants to address additional resource concerns in a more comprehensive manner. NRCS updated its enhancement list and adopted the concept of bundling for the second ranking period. Certain enhancements will be offered as "bundles." The bundling concept enables participants and the nation to realize conservation benefits from the synergy that results when activities are implemented as a system. Participants who elect to bundle enhancements receive a positive adjustment in their ranking score and payments.

(2) Calculating payments based on a process that considers conservation performance points rather than just acres. Each conservation activity has a performance value. Basing payments on conservation performance points rather than a rate per acre enables participants to influence their payment rates according to the type and number of conservation activities they are willing to adopt.

(3) Placing a higher value on payments for additional activities versus existing activities through split-rate payments. For contracts selected for enrollment during the first ranking period, NRCS provided participants with an annual payment. Although the single annual payment was calculated giving consideration to both new and existing activities, participants could not readily distinguish the value of each since the participant received one payment. For the second and future application ranking periods, NRCS intends to calculate payments for additional conservation activities at a higher payment rate than existing activities with the goal of providing a majority of payments to compensate producers for implementing additional conservation. In the initial ranking period, 63 percent of the payments were attributed to existing conservation activities. NRCS believes this higher payment for additional conservation performance will encourage producers to apply additional activities and serve to maximize net additional environmental benefits as much as possible beyond the current 63:37 ratio.

(4) Requiring the adoption of additional conservation activities to earn annual payments. To earn annual payments for an eligible land use, a participant must schedule, install, and adopt at least one additional conservation activity on that land-use type. Eligible land-use types that fail to have at least one additional conservation activity scheduled, installed, and adopted will not receive annual payments.

(5) Implementing a State allocation process that considers the extent and magnitude of conservation needs associated with agriculture production. The State allocation process will consider natural resource data from sources like the NRI related to the nation's major resources concerns, including water quality and quantity, soil quality, air quality, and wildlife habitat.

(6) Developing contract renewal criteria that require new conservation activities. In order to renew a contract after the initial contract period, participants will need to expand the degree, scope, and comprehensiveness of conservation activities by meeting an expanded stewardship threshold requirement and agreeing to adopt additional activities during the renewal period.

In establishing the measures and methodologies NRCS will use to monitor program performance, the agency believes the CMT will assist in measuring outcomes. The conservation performance the CMT estimates is measured in terms of relative physical effects; they are not true environmental benefits. However, the CMT performance estimates are a step forward from output measures, like acres of conservation practices, used by former programs. NRCS acknowledges challenges, but intends to pursue the use of CEAP results with CMT performance data to help produce meaningful estimates of environmental effects accomplished through CSP.

NRCS received numerous comments on CSP as it relates to organic farming, including that the regulations and overall design of the program should include specifically organic conservation activities, as well as ensuring that all conservation activities rewarded under the program include appropriate variations relevant to organic farms where the standard conservation practice may be inappropriate for organic systems; organic crop and livestock systems should be recognized for their environmental benefits.

Since organic producers have adopted a number of conservation measures that

have significant environmental benefits, CSP provides opportunities for their participation. The NRCS document entitled "The Conservation Stewardship Program's Contribution to Organic Transitioning" highlights how CSP can be used by organic producers. The questions in the CMT are designed to assess conservation outcomes on the land. As such, the questions do not specifically distinguish between organic and non-organic producers. However, in most instances organic producers should score very well in the CMT by the use of cover crops, perennials, diverse rotations, and limited use of pesticides. In addition, CSP offers a number of enhancements targeted specifically at organic producers.

NRCS takes seriously its responsibilities related to providing conservation opportunities to organic producers. The agency is working to ensure its field office staffs have adequate training to work with organic farmers. Individual States conducted numerous training sessions on conservation planning with organic producers. A national teleconference on organic certification has been conducted, and plans are in place to work with several private organic groups to provide training to NRCS State specialists on organic farming systems.

### Summary of Initial Ranking Period

NRCS began accepting program applications for the initial ranking period on August 10, 2009. The cut-off for the initial ranking period was September 30, 2009.

Each application was evaluated for basic eligibility criteria: applicant eligibility, land eligibility, and the stewardship threshold requirement. To meet the stewardship threshold requirement, an applicant must meet or exceed the threshold level for at least one resource concern at the time of the application, and at least one priority resource concern by the end of the contract period.

NRCS assisted applicants with completing a resource inventory of their operation using the CMT. The CMT estimates conservation performance to determine if the application meets the minimum stewardship threshold requirement. Conservation performance points estimated by the CMT are also used to determine application ranking scores and contract payment levels.

The conservation performance ranking score is used to determine the priority of funding for an applicant. Applicants will be funded starting with the highest score and working down the list until acres are exhausted. The

conservation performance ranking score is based on five factors:

(1) The level of conservation treatment on priority resource concerns at the time of application.

(2) The degree to which treatment on priority resource concerns increases conservation performance.

(3) The number of priority resource concerns to be treated to meet or exceed thresholds by the end of the contract.

(4) The extent to which other resource concerns will be addressed to meet or exceed stewardship thresholds by the end of the contract.

(5) A tie-breaker factor is used in the event that application ranking scores are similar. The application that represents the least cost to the program will be given higher priority.

To reach CSP's authorized annual acreage enrollment limit of 12,769,000 acres, NRCS allocated acreage to States based primarily on each State's proportion of eligible land. Within States, NRCS pre-approved applications for funding based on ranking scores and funding pool acreage allocations. As of December 1, 2010, over 10,700 applications were pre-approved for program participation.

Preliminary analysis of the initial ranking period provided NRCS with some key findings.

(a) Producer interest in CSP was high. During the initial ranking period, NRCS received over 21,000 applications on an estimated 33 million acres from across the Nation including the Caribbean and Pacific Island areas. In general, applicants were diverse in terms of size of operation, land use type, and geographical location. Rangeland was the land use most offered for program consideration (51 percent of acres), followed by cropland (37 percent), NIPF (7 percent), and pastureland (5 percent).

(b) Water quality (89 percent of pools), plants (85 percent pools), wildlife (77 percent pools), soil quality (nearly 70 percent of pools) were the top priority resource concerns identified in the funding pools by the States.

(c) Eligible applicants share a common characteristic—they are excellent stewards of the land. In fact, 80 percent of applicants met five resource concerns at the time of application. Conservation performance payment points from existing activities equaled 63 percent of the total points generated. This dominance of practicing land stewards in the initial ranking period limited the agency's ability to change the relative weights on the factors in the ranking process and substantially alter the distribution of conservation performance payment points between existing and additional

activities. Future sign-ups will likely draw applicants from the larger agricultural community where the level of stewardship may be lower, thus giving additional activities a larger role in the ranking of applications.

### Discussion of Comments and Regulatory Changes

NRCS solicited comments on the CSP interim final rule from July 29, 2009, through October 28, 2009. The original comment period ended on September 28, 2009, but was extended through October 28, 2009, to enable the public to submit comments throughout the program's first enrollment period. NRCS received 208 letters representing 208 individual signatures. The total number of letters received includes five identical duplicate letters and eight letters from eight individuals submitting more than one unique letter. A total of 1,534 comments were assessed during the content analysis process.

In addition to requesting public comment in general on the rule and the environmental analysis, NRCS sought comment on the following specific issues:

**Ranking Factors**—NRCS requested input on the appropriate weighting of the five ranking factors that are intended to maximize environmental benefits while maintaining consistency with the statutory purposes of the program.

**Payments**—Setting the annual payment rates represented a significant challenge for NRCS. In addition to managing the program within the national average rate of \$18 per acre, the 2008 Act also provides an acreage enrollment limit of 12,769,000 acres for each fiscal year. To address these constraints, NRCS used the first ranking period as a payment discovery period to arrive at a uniform payment rate per conservation performance point by eligible land use type. NRCS requested public comment on ways to address program acreage and payment constraints, refine the payment approach, and make annual payments more consistent and predictable. Additionally NRCS sought public comment on the proper distribution of CSP annual payments between payment for additional activities and payment for existing activities.

**Contract Renewal Criteria**—Section 1470.26 in the interim final rule provided that NRCS will permit contract renewals to foster participant commitment to increased conservation performance. NRCS sought public comment on the contract renewal criteria.

State Allocations—NRCS requested comments on the factors used to allocate acres to States.

Stewardship Threshold—NRCS requested input on whether meeting the stewardship threshold on *one* resource concern and one priority resource concern is adequate, or if that number should be greater.

Wildlife as Priority Resource Concerns—NRCS requested comments on whether or not at least one of the priority resource concerns should specifically be identified to address wildlife habitat issues.

The topics that generated the greatest response include 1470.7 Enhancements and Conservation Practices, 1470.20 Application and Ranking, and 1470.24 Payments.

The public comments are addressed by section number. The CSP regulation is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and Subpart C—General Administration. Below is a summary of the comments received for each section and the agency response.

#### *Subpart A—General Provisions*

##### Section 1470.1 Applicability

A total of 16 comments were received. This section sets forth the purpose, procedures, and requirements of CSP. The subject of the comments varied considerably. Commenters offered thoughts and ideas regarding the intent of the program, program goals, and whether CSP appeals to new farmers or small farmers using CSP in coordination with other Farm Bill programs, organic production, local food sources, and education and training.

NRCS received four comments in support of the program intent. Commenters expressed that this program is an improvement over the Conservation Security Program from the perspective of fairness in measuring sustainability and as a tool that has the possibility of being an agent of change, making agriculture more sustainable and coexisting, or as a part of essential ecosystems; the new CSP holds tremendous potential to make a significant contribution to assisting farmers, ranchers, and private forest landowners in solving some of the nation's most pressing environmental problems. A third identified that implementation in all States is critical to maximizing the program's potential; the fourth commented that the program is long overdue—both farms and the environment will benefit from the program. Some commenters expressed that CSP should be available for small farmers.

#### *NRCS Response*

No changes are made to the rule in response to these comments. NRCS agrees that CSP can make a significant contribution in assisting farmers, ranchers, and private forest landowners with their conservation efforts regardless of the size of the operation, production type, or land use.

#### *Comments*

Three commenters expressed thoughts related to program goals. One commenter expressed that sustainability is related to not only soil conservation and crop yields but also an ecological responsibility. CSP goals should include helping farmers in similar farming systems become more sustainable. One commenter supported the organic production assistance as long as the conservation priorities and requirements for air, water, soil, and wildlife are being met. The third commenter advised that NRCS should follow the intent of the law. The statutory purpose of CSP is comprehensive resource management with emphasis on producers improving or adding additional conservation activities to their operation.

#### *NRCS Response*

No changes are made to the rule in response to these comments. NRCS determined the regulation aligns with the commenters recommendations. Section 1470.1, paragraph (d) identifies that NRCS will provide program participants financial and technical assistance for the conservation, protection, and improvement of soil, water, and other related natural resources. By addressing resource concerns in a comprehensive manner, farming systems will become more sustainable.

NRCS is following the program's intent provided for in statute. The statute directs the Secretary to carry out a CSP to encourage producers to address resource concerns in a comprehensive manner by:

- (a) Undertaking additional conservation activities; and
- (b) Improving, maintaining, and managing existing conservation activities.

#### *Comments*

NRCS received concerns about CSP only reaching those who already participate in conservation programs, as well as a recommendation for more levels of conservation in the categories in both the CMT and enhancement list. While the overall score may not allow a lower conservation threshold to enter a contract under current acreage

limitations, demand for the program and ecological benefits to the public could drive an increase in legislative acreage and funding levels.

#### *NRCS Response*

No changes are made to the rule in response to these comments. NRCS disagrees that the CSP only reaches farmers who currently use conservation programs. NRCS conducts outreach to all producers without limiting participation because of size or type of operation or previous participation in conservation programs. The level of producer interest for the initial ranking period demonstrates that the program is attractive to all producers who are willing to install new or improve, maintain, or manage existing conservation systems.

It is clear by the establishment of the stewardship thresholds in the CSP statute that CSP is to be delivered to lands that have existing conservation measures addressing at least one resource concern and must meet one priority resource concern by the end of the contract period. NRCS places no priority on existing conservation measures having been previously installed under USDA or other conservation programs. NRCS will continue to provide planning assistance to other cost-share programs for beginning resource stewards and those not approved for CSP. As producers improve their environmental performance they may have their application re-evaluated in subsequent ranking periods.

NRCS agrees that demands for the program and ecological benefits may influence the authorized acreage and funding levels.

#### *Comments*

Four commenters expressed recommendations related to CSP being a working lands program. The commenters largely want the program to be targeted to the needs of working agriculture lands and their operators and improving the land for the next generation.

#### *NRCS Response*

No changes are made to the rule in response to these comments. The program rules and ranking process focus on conservation activities on working lands. In addition, the majority of the conservation activities available through the program are specifically targeted to working lands.

#### *Comments*

NRCS received comments related to placing particular focus, attention,

weight, and publicity on programs that increase local food that is grown using local resources.

#### *NRCS Response*

Although NRCS welcomes new ideas related to working with small farms, local food production, and improving the resource conditions on these farms, no change is made to the rule in response to these comments. In recognition of the importance of the locally grown movement to the nation's food producers, the program offers an enhancement specifically for locally grown and marketed farm products for those interested in improving their resource stewardship and selling produce through local markets.

#### *Comments*

One commenter requested NRCS clarify that CSP can be used in a coordinated manner with all other Farm Bill conservation programs to address resource concerns in a comprehensive manner. This approach is consistent with the Managers' Report that encourages NRCS to use other conservation programs to assist landowners in achieving conservation objectives. The rule should clarify that enrollment in other conservation programs, such as EQIP and WHIP, does not exclude producers from CSP, and these programs can be used in conjunction with CSP to address resource concerns provided that producers do not receive duplicate payments on the same acres.

#### *NRCS Response*

NRCS promotes the use of other programs to address resource concerns in a comprehensive manner. The agency allows applicants to identify other practices they are willing to implement to meet resource concerns that they are not currently meeting. These additional practices could be cost-shared through other NRCS programs if the practices are not being compensated through CSP. In addition, NRCS encourages producers that are not currently eligible for CSP to contact their NRCS office or visit the Web site at <http://www.nrcs.usda.gov/programs/> to find out about other conservation programs that can assist them on meeting their conservation needs. To address the concerns by the public, NRCS amends the rule in paragraph 1470.7 by adding paragraph (c) to read, "CSP encourages the use of other NRCS programs to install conservation practices that are required to meet the agreed-upon stewardship thresholds, but the practices may not be compensated through CSP."

#### *Comments*

One commenter offered that there is a need for expert education and training and close CSP implementation scrutiny.

#### *NRCS Response*

No changes are made to the rule in response to this comment. NRCS agrees that its employees and clients need to be well informed about this program and that it needs to monitor operations to ensure the program is being applied consistently across the country. To address the educational component of the comment, NRCS made available to the public detailed documentation explaining program processes, payment rate establishment, CMT matrixes, questions, and scoring calculations. Documentation can be found at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html). In addition, NRCS conducted a series of demonstrations and informational meetings for internal and external customers.

#### Section 1470.2 Administration

##### *Comments*

A total of 35 comments were received on section 1470.2, "Administration." This section describes the roles of NRCS at the national and State levels. Most of the comments related to acreage enrollment levels and historically underserved producers. However, a few comments were received related to sign-up administration, and one comment related to pollinators.

One commenter expressed the need for NRCS to ensure policies are being implemented consistently across field offices. The commenter identified that the farmers they work with noted clear variability between county offices in the interpretations of various aspects of CSP, both in answering CMT questions and the application of conservation practices and enhancement activities.

##### *NRCS Response*

NRCS recognizes the need for consistency in implementing this program. NRCS will ensure training of field office staff on a continuous basis to ensure quality program delivery.

#### **Sign-Up Periods**

##### *Comments*

Four comments were received related to sign-up periods; the commenters are concerned about the timing of the sign-up, urging NRCS to choose sign-up periods carefully and avoid closing ranking periods and farm evaluations during busy times of the year for farmers, such as spring planting and fall harvest. NRCS received inquiries regarding whether allocated acres will

be transferred to other States if they are not used, and how the rankings are created other than the electronic tool available only to NRCS personnel; and one commenter expressed that agriculture funds are not intended just for an ever shrinking group who are growing certain commodities.

##### *NRCS Response*

NRCS recognizes that having a sign-up at a time that is suitable to its clients is critical for the success of the program. Therefore, NRCS offers a continuous sign-up which allows producers to submit their application at any time. NRCS is fine-tuning the CMT design so it can be used to evaluate applications accepted throughout the continuous sign-up period, allowing for applications to be ready for evaluation in advance of an announced sign-up and funding cycle. NRCS will make every effort to enable those interested in applying for the program to have ample time to do so.

Regarding the need for information about ranking, ranking pools within States were established based on geographic area boundaries. Each State identified, with review and input from the State Technical Committee, a minimum of three and a maximum of five priority resource concerns for each geographic area. The priority resource concerns selected for each ranking pool are used on three out of the four ranking factors, thereby ensuring that program dollars are addressing the critical resource concerns for each State ranking pool area. Priority resource concerns rank higher than non-priority resource concerns.

In any fiscal year, acres allocated to a State that are not enrolled by a date determined by the Chief, may be reallocated with associated financial and technical assistance funds to another State for use in that fiscal year.

The CMT is the only approved tool to determine the relative conservation physical effects of conservation activities on natural resource concerns and energy to estimate the existing conservation performance levels and the additional conservation performance improvement to be achieved by an applicant. The tool is currently Web based and linked to the NRCS Programs Contracting Software. There is no way to make the tool available to the public at this time. However, it is NRCS' intention to move the tool to a Web environment where it can be accessible by the public. Until these adjustments are complete, NRCS will provide producers with a hard copy of the questions that may be used to evaluate their applications if requested.

NRCS disagrees that program funds are targeted to a small select group. The CSP is a nationwide program open to all eligible producers regardless of the type of crops that are grown. Payments through CSP are not subsidies, but rather a contract payment for providing environmental benefits from maintaining existing conservation activities and adopting new conservation activities. CSP is not limited to commodity producers and is "operation size" neutral in its application ranking.

#### Comments

One commenter requested clarification on how NRCS arrived at its policy option findings by evaluating in its decisionmaking matrix both the computerized-modeling formula and the key statutory-policy phrase "to the maximum extent practicable."

#### NRCS Response

The policy option findings that were reported in the benefit-cost analysis were generated using a model that incorporated most of the CSP's program constraints, as well as using secondary data on the characteristics of potential participants and a prototype of the CMT. The CMT was not complete when the analysis was done. The objective of the analysis was to estimate the direction of change in program outcomes given certain policy options—not to predict with certainty what future program enrollment and outcomes would be. In that analysis, any outcomes that involved violations in the program constraints were reported, even though care was taken so as to meet them "to the maximum extent practicable."

#### Acreage Enrollment Levels

##### Comments

Twenty-two comments were received relaying the same message; the entire acreage designated by Congress should be available over the life of the Farm Bill. NRCS also received comments that it should decrease its administrative costs. The conservation stewardship plan will clearly be an important integral part of any contract, but the plan development and oversight costs must be balanced with the implementation costs borne by the participating farm operator. One commenter recommended a new paragraph (4) be added to 1470.2(c) to stipulate that NRCS will develop and make available the organic crosswalk; one commenter recommended NRCS change paragraph 1470.2(c)(1) by inserting "each year" immediately prior

to "to determine enrollments." In paragraph (d) insert after "\$18 per acre" the following words directly from the statute: "During the period beginning on October 1, 2008, and ending on September 30, 2017."

#### NRCS Response

NRCS conducted an analysis using the Cost of Programs Model to determine the funds needed to promote and deliver the CSP. In addition, real time application data was used to establish the national payment rates to determine the distribution of financial assistance to meet program constraints. The CSP presents a significant shift in how NRCS delivers and provides conservation program payments. Under CSP, participants are paid for conservation performance. Therefore, it is inappropriate to compare a traditional program like EQIP with CSP.

NRCS does not agree that additional direction related to providing assistance for organic production is necessary. The statute provides that outreach and technical assistance are available to specialty crop and organic producers and their ability to participate in the program. Additionally, the program offers activities for the transition to organic cropping and organic grazing systems.

To achieve the conservation goals of CSP, NRCS will:

(1) Make the program available nationwide to eligible applicants on a continuous application basis with one or more ranking periods to determine enrollments. One of the ranking periods will occur in the *first quarter of each fiscal year*, to the extent practicable; and

(2) To add clarity to the regulation, NRCS will amend paragraph 1470.2(d) to read as follows: During the period beginning on October 1, 2008, and ending on September 30, 2017, NRCS will, to the maximum extent practical: (1) Enroll in CSP an additional 12,769,000 acres for each fiscal year, and (2) Manage CSP to achieve a national average rate of \$18 per acre, which includes the costs of all financial and technical assistance, and any other expenses associated with program enrollment and participation.

#### Historically Underserved Populations

##### Comments

Several comments were received related to historically underserved producers with the majority of the concerns directed to socially disadvantaged farmers or ranchers and beginning farmers or ranchers. One commenter expressed that the CRIA is incomplete and appeared to overstate

conclusions. Additional analysis is necessary, as is implementation of transparency and accountability provisions in section 14006 of the Farm Bill. Another commenter recommended NRCS require and conduct reviews in each State to address anticipated needs as well as gaps in participation in specific programs by federally recognized Indian tribes and by socially disadvantaged and other historically underserved producer groups by race, gender, and ethnicity. A third commenter expressed that NRCS must have a methodology for informing socially disadvantaged producers of the reasons for the refusal of a CSP contract. Another requested that NRCS ensure the set-asides for socially disadvantaged farmers or ranchers and beginning farmers or ranchers are swiftly and thoroughly implemented. One commenter requested sections 1470.2(e) and 1470.20(1)(3) be revised to establish that the 5 percent set-aside for beginning farmers or ranchers and for socially disadvantaged farmers or ranchers be target floors, not ceilings.

#### NRCS Response

NRCS has standard procedures to formally inform all applicants of the reasons they were not awarded a CSP contract. Along with the determination, applicants are offered appeal rights. This agency policy can be found in the Conservation Program Contracting Manual, Part 512 located at <http://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=25932>.

CSP policy provides that each State set aside a minimum of 5 percent of their State acre allocation for these ranking pools. To add clarity and provide flexibility to set aside more than 5 percent, NRCS moved the language related to ranking pools for these groups by deleting the text in 1470.2(e) and adding text in 1470.4(b) to read as follows: Of the acres made available for each of fiscal years 2009 through 2012 to carry out CSP, NRCS will use, as a minimum: (1) 5 percent to assist beginning farmers or ranchers, and (2) 5 percent to assist socially disadvantaged farmers or ranchers. Paragraph (b) has been redesignated as paragraph (c) and amended for clarity to read "In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS, may be reallocated with associated funds for use in that fiscal year under CSP."

#### Section 1470.3 Definitions

##### Comments

Thirty-eight comments were received on section 1470.3, "Definitions." This

section sets forth definitions for terms used throughout this regulation.

### Agriculture Land

#### Comments

One commenter requested NRCS insert "including energy" after "agricultural products."

#### NRCS Response

NRCS is retaining the definition in the interim final rule to be consistent with other NRCS programs. Crops for producing energy are included in the term agricultural products. Although NRCS is retaining the definition for consistency and clarification purposes, NRCS adds the following text to the end of the definition: "Agriculture lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agriculture operation, and other types of agricultural land used for production of livestock."

### Agriculture Operation

#### Comments

One commenter responded that the definition is inconsistent with the statute, which reads "eligible land shall include all acres of an agricultural operation of the producer, whether or not contiguous, that is under the effective control of the producer at the time the producer enters into a stewardship contract." There is a conflict between the words "under effective control \* \* \* for the term of the proposed contract" vs. "under effective control \* \* \* at the time the producer enters into a stewardship contract."

One commenter expressed support for the definition in the interim final rule because it allows landowners to participate.

#### NRCS Response

NRCS agrees that the definition of agriculture operation needs to be consistent with the intent of the statute. Therefore, NRCS amends the definition of agricultural operation and adds a definition for effective control to clarify that control of the land is needed from the time the producer enters the stewardship contract and for the required period of the contract. *Agricultural operation* means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the applicant, and

(2) Which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

*Effective control* is defined to mean the possession of the land by ownership, written lease, or other legal agreement and authority to act as decisionmaker for the day-to-day management of the operation both at the time the applicant enters into a stewardship contract and for the required period of the contract.

### Beginning Farmer or Rancher

#### Comments

One commenter requested NRCS change the definition of beginning farmer or rancher to make it conform to the definition of socially disadvantaged farmer or rancher with respect to entities. In both cases, entities in which at least 50 percent ownership in the farm business is held by the target population should qualify.

#### NRCS Response

No changes are made to the rule in response to this comment. NRCS retains the agency's official definition that was published in the interim final rule to be consistent with other USDA and NRCS programs.

### Conservation Planning

#### Comments

One commenter requested the definition be revised to bring it into accord with statute concerning conservation planning, including the addition of conservation planning in the conservation activities definition, the contract definition, and the payments section.

#### NRCS Response

NRCS did not include conservation planning as part of the conservation activities to be compensated because the producer will not incur any cost for planning. The CSP delivery model necessitates a conservation stewardship plan prior to contract obligation. Therefore, the plan must precede the contract for which payment is granted. The authorizing language provides that payments will not be provided for conservation activities for which there is no cost incurred or income forgone. No changes are made to the rule in response to this comment.

### Conservation Activities

#### Comments

One commenter requested NRCS change the definition to include enhancements and a change to the

enhancement definition to incorporate environmental quality and to explicitly include the management and maintenance of existing enhancements and the adoption of new enhancements.

One commenter expressed concern that the definition in the statute includes agricultural drainage systems and that the wording may promote wetland drainage. The commenter encouraged NRCS to utilize other conservation programs such as those available through the Continuous Conservation Reserve Program (CRP) (buffers, filter strips, etc.) to achieve priority resource concerns such as water quality.

#### NRCS Response

NRCS retains the current definition to be consistent with the language in the legislation. NRCS does not feel it is appropriate to add the program purpose to the definition of conservation activities.

NRCS acknowledges the concern related to the language in the statute that may promote wetland drainage. NRCS addressed this concern by offering two agricultural drainage water management enhancements with specific criteria to manage existing drainage system to reduce the potential for water quality problems from drainage water and to manipulate systems for wildlife habitat benefits. The program promotes buffers, filter strips, and other vegetative practices to address water quality concerns as well as other natural resources.

### Conservation Practice

#### Comments

NRCS received a recommendation that it amend the definition to include "commonly used to meet a specific need in planning and carrying out soil and water conservation programs, including wildlife management and forest health for which standards and specifications \* \* \*" The NRCS conservation practice standards not only address soil and water conservation but also wildlife habitat management and forest health.

#### NRCS Response

NRCS agrees with the comment and amends the definition to read as follows: *Conservation practice* means a specified treatment, such as a structural or vegetative practice or management technique, commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the NRCS Field Office Technical Guide (FOTG), Section IV, which is based on

the National Handbook of Conservation Practices.

### Enhancements

#### Comments

One commenter recommended NRCS change the definition for “enhancements” to read “a type of activity and the associated infrastructure and equipment installed and adopted to treat natural resources and improve conservation performance.”

#### NRCS Response

No change is made to the rule in response to this comment. NRCS is retaining the current definition of enhancements. The definition provides that enhancements are a type of conservation activity used to treat natural resources and improve conservation performance. This includes, by implication, the “infrastructure and equipment” necessary for an enhancement. In many cases enhancements are management actions that do not require equipment or infrastructure.

### Management Measure

#### Comments

One commenter requested NRCS insert “or conservation system” after “conservation practice.”

#### NRCS Response

No change has been made to the rule in response to this comment. NRCS retains the current definition of management measure. A conservation system could be considered a management measure.

### Nonindustrial Private Forest Land

#### Comments

NRCS received four comments on the definition of NIPF. One commenter supports the definition as written in the interim final rule. Another commenter requested NRCS remove or qualify the phrase “or is suitable for growing trees” to preclude the planting of trees in places that will further diminish habitat for at-risk species. A third commenter requested clarification on the overlap that exists between forest land and incidental forest lands on agricultural operations by defining incidental forest lands under the agricultural land definition. A fourth commenter requested the “agriculture land” and “agricultural operation” definitions be updated to include NIPF.

#### NRCS Response

The 2008 Act provides the definition of NIPF which is applicable to all Title

2 conservation programs, including CSP; therefore, NRCS keeps the current definition as provided in the interim final rule.

NRCS is preventing an overlap between NIPF and incidental forest land by not allowing incidental forest land to be included in an agricultural operation contract for program payments. However, if an applicant designates the forest land for funding consideration, then it will be considered as a component of the operation and will be offered as separate application.

### Resource-Conserving Crops

#### Comments

NRCS received a significant number of comments on the definition of resource-conserving crops. Seventeen commenters requested that the definition specifically require a perennial grass, legume, or legume-grass mixture for use as a forage, seed for planting, or green manure to be part of the rotation. A number of these commenters also expressed that rotations that include only crops eligible for Farm Bill commodity subsidies should not qualify as resource-conserving.

Although one commenter supported the definition of resource-conserving crop and the use of supplemental payments for implementing resource-conserving crop rotations, many more were critical. Critical comments included the concern that a commodity crop rotation with “high” residue is not a sufficiently effective practice; NRCS should return to the strong definition used for the 2005 CSP interim final rule to ensure that farmers are being paid for significant environmental benefits; NRCS has chosen to allow the simplest of rotations, some of which result in no or close to no conservation benefits and are simply standard, production-related rotations; definition fails to meet the intent of the Farm Bill managers who “do not intend for the Secretary to pay for no-till or other common practices that have no cost to the producers; and fix the definition so that it clearly rewards complex rotations that deliver significant environmental benefits and so that farmers implementing rotations rightly merit the supplemental payments.

#### NRCS Response

NRCS has evaluated all comments received on the definition of “resource-conserving crop” and revises the definition to read as follows: resource-conserving crop means a crop that is one of the following: (1) A perennial grass, (2) a legume grown for use as

forage, seed for planting, or green manure, (3) a legume-grass mixture, and (4) a small grain grown in combination with a grass or legume, whether interseeded or planted in rotation.

### Section 1470.4 Allocation and Management.

Section 1470.4, “Allocation and management,” addresses national allocations and how the proportion of eligible land will be used as the primary means to distribute CSP acres and associated funds among States. NRCS received three comments on allocations in general and seven comments on State allocations.

### General Comments

One commenter requested allocations be conducted fairly by not being skewed towards large farms or established players. The commenter also requested a landscape management perspective be employed to maximize public benefit at the lowest cost per watershed.

Another commenter requested that NRCS work with other Federal agencies, including the Environmental Protection Agency (EPA), U.S. Geological Survey, U.S. Fish and Wildlife Service, and State natural resource agencies to identify the relative extent and magnitude of particular conservation needs associated with agricultural production in each State. The States with the greatest conservation needs should be prioritized, but their ranking should still be contingent on factor (ii), the degree to which implementation of CSP will impact the natural resource needs.

A third commenter questioned why, on page 37503 (table 1), the NIPF component (approximately 1.269 million acres) was not included in the analysis and whether or not the absence of that information would influence the choice of policy options.

#### NRCS Response

No changes are made to the rule in response to the comments. The regulatory text and the process for determining State allocations is not skewed toward large farms. The State acre allocations are based on each State’s proportion of eligible acres to the number of eligible acres in all States and other consideration of funds, as determined by the Chief. NRCS used the 2003 NRI and 2007 Agricultural Census (AK, HI, Guam, and PR) data to determine the percent of agricultural lands (cropland, pastureland, and rangeland) per State. The National Woodland Owner Survey, 2006, from the U.S. Forest Service (USFS), Forest Inventory Analysis data was utilized to

determine the percent of NIPF per State. Once those values were established, the percentages were applied against the available agricultural lands (cropland, pastureland, and rangeland) for CSP which is 11,492,100 and against the 1,276,900 for NIPF, providing an equitable acreage allocation based on the national values. NRCS will also give consideration to conservation needs and the degree to which CSP implementation impacts those needs in future year's allocations.

NRCS is incorporating the actual data for all applicants from the initial ranking period in the final CEA. Although the initial CEA tried to control for the absence of NIPF, this final analysis will explicitly account for the exact acreage and budget outlays associated with NIPF. It is expected that the final CEA will be greatly improved with this additional information.

#### **State Allocations—Comments Supporting the State Allocation Process**

Two commenters expressed support for the acreage allocation system used to determine the acres available for each State in the first sign-up period and in the regulation. The one commenter opined that the acreage allocation process worked very well and requested the process be continued for the life of the program. The other commenter expressed that the allocation factors established by section 1238(b)(2)(A) and (B) of the Farm Bill and section 1470A(a)(2)(i) and (ii) of the rule are important for ensuring CSP does the most it can to drive environmental improvement. These factors can and should be emphasized by NRCS in making acreage allocations to States.

Another commenter expressed basic agreement with the interim final rule on allocations but urged sparing use of the additional considerations beyond the States' proportion of eligible land. The commenter urged NRCS to make only modest adjustments, if any, in the allocations to take into account the discretionary additional considerations. In the near term, any such modest adjustments should be based on both a clear and convincing need and on the proven effectiveness of the State in delivering the program.

#### *NRCS Response*

NRCS will explore other considerations for future sign-up periods.

#### **Other Comments**

NRCS received a comment that CSP is a premier working-lands platform for rice producers with the many attendant waterfowl and other wildlife benefits

they provide to fulfill the CSP enhance and conserve requirements. For this reason, it is essential that rice producing States be allocated sufficient CSP acres that recognize their rice-related conservation benefits and provide an opportunity for rice producers' meaningful participation. In addition to the Farm Bill mandating a primary State-acreage allocation method, it also calls for consideration of other factors, which should be evaluated when CSP rice-producing State allocations are determined.

One commenter urged NRCS to emphasize factors (2)(i) and (2)(ii) from section 1470.4 of the rule ("the extent and magnitude of the conservation needs associated with agricultural production in each State," and "the degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs").

One commenter recommended, in 1470.4(b), when a State does not use acres reserved for socially disadvantaged farmers or ranchers those acres be reallocated to other States with higher demand for the program.

#### *NRCS Response*

The State acre allocations are based on a formula that evaluates each State's proportion of eligible acres to the number of eligible acres in all States along with consideration of the extent and magnitude of the conservation needs associated with agriculture production in each State. NRCS amends paragraph (a)(2)(i) to clarify that this determination will use science-based resource factors that consider regional and State-level priority ecosystem areas. This ensures equitable acreage allocation. Additionally, NRCS amends 1470.4(b) to provide that State Conservationists allocate acres to ranking pools, to the extent practicable, based on the same factors the Chief uses in making State allocations. Additionally, allocated acres that are not enrolled in any fiscal year by a date set by the Chief, may be reallocated with associated funds for use in that fiscal year.

The text related to reserving acres for beginning farmers or ranchers, and socially disadvantaged farmers or ranchers is located in paragraph (c) and reallocating unused acres are found in paragraph (d). NRCS amends the new paragraph (d) to read, "In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the reallocation process, NRCS will consider several factors, including

demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

#### **Section 1470.5 Outreach Activities.**

This section describes how NRCS will establish special program outreach activities at the national, State, and local levels. Nine comments were received related to outreach activities for CRP lands, organic producers, and NIPF landowners. The comments are categorized in alphabetical order based on topic.

#### **Conservation Reserve Program Lands**

##### *Comments*

Several comments were received related to the eligibility provision for the CRP land. Six commenters recommended NRCS allow CRP participants to apply for CSP in the last year of the CRP contract. Additionally, the requirement that any farmable acres must have been farmed in 4 of the last 6 years is troubling. This provision leaves any land previously enrolled in CRP, but recently expired from the contract, completely ineligible for the program. One commenter suggests at the very least allow any acres classified as highly erodible to be eligible for CSP.

##### *NRCS Response*

No changes are made to the rule in response to the comments. The program's authorizing language states that land enrolled in CRP is not eligible for enrollment in the program. There is an exception for land that has not been farmed 4 of the last 6 years. The statute provides that the requirement will not apply if the land has previously been enrolled in CRP.

##### *Comments*

One commenter encouraged NRCS to include language in section 1470.5 clarifying that expiring CRP lands should be targeted by NRCS. The commenter recommends that NRCS provide guidance on how producers will be encouraged to protect conservation values on expiring CRP by enrolling in CSP.

##### *NRCS Response*

NRCS recognizes the natural resource benefits the nation has realized on CRP lands and is considering options for those producers with expiring CRP lands. However, NRCS is addressing this issue in policy rather than in the rule. Rather than targeting CRP lands specifically, NRCS considers the importance of maintaining land in conserving uses such as grassland and plans to spread this message through outreach and public announcements.

**Nonindustrial Private Forest Land***Comments*

NRCS received comment that it should work with other Federal and State agencies and non-governmental organizations that can assist them with outreach to forest landowners. Additionally, NRCS should conduct expanded outreach to this group of landowners since many NIPF landowners have not traditionally participated in USDA cost-share programs and are unfamiliar with the application process.

*NRCS Response*

NRCS agrees that many NIPF landowners have not traditionally participated in USDA conservation programs. NRCS encouraged State Conservationists to partner with other agencies and non-governmental organizations to ensure NIPF landowners were aware of the program. Some examples of efforts that States made to reach out to NIPF landowners were partnering with Small Woodland Owners Association, USFS, State Department of Forestry, and representatives from other local organizations. Some States provided training and promotional materials to each organization so they could provide accurate CSP information to their respective clients. Eight percent of the acres enrolled during the initial sign-up were NIPF.

**Organic and Transitioning Farmers***Comments*

NRCS received a few comments related to organic production. Comments included encouraging participation by organic and transitioning farmers; fully develop and implement, in close coordination with the National Organic Program, the CSP “organic crosswalk;” ensure outreach to organic and transitioning farmers by providing materials that are farmer-friendly and that account for the specific requirements of organic systems under the National Organic Program rule and how those requirements overlap with CSP; and seek to conduct outreach through avenues that organic and transitioning farmers use and access, which often are different from the information avenues that most conventional farmers use.

*NRCS Response*

No changes are made in the rule in response to the comments. NRCS is encouraging participation of organic producers by conducting special outreach efforts to this group. During the initial CSP sign-up period, outreach

efforts were conducted in 17 States targeting organic farming organizations, groups, and individuals. Many States have representation on the State Technical Committee from organic organizations offering their views on how conservation programs are implemented within a State. State Conservationists have been encouraged to outreach to organic farmers, and NRCS will continue these efforts as we move forward with the program into the future.

**Other***Comments*

One commenter recommended NRCS conduct outreach programs to help make farmers and ranchers aware of the importance of providing habitat for managed and native bees and technical resources and available assistance.

*NRCS Response*

NRCS conducts outreach activities to a wide audience to promote the program and the benefits of addressing resource concerns in a comprehensive manner. CSP offers several opportunities to address pollinator habitat through questions in the CMT and enhancements. NRCS will consider additional outreach and publicity efforts to make producers aware of the opportunities to address pollinator habitat through CSP. No changes are made to the rule in response to this comment.

**Section 1470.6 Eligibility Requirements***Comments*

Section 1470.6, “Eligibility requirements,” sets forth the criteria for determining applicant and land eligibility. NRCS received numerous comments on this section. One commenter expressed that a participant’s personal details and proprietary operational information must be protected at all times by the Department.

*NRCS Response*

Information about applicants is generally not released to the public because individual privacy rights must be protected. The Freedom of Information Act (FOIA) and the Privacy Act, section 2004 of the Farm Security and Rural Investment Act of 2002, and section 1619 of the 2008 Act permit the government to withhold certain information. Refer to GM–120, Part 408, Subpart C, FOIA and Privacy Act, for NRCS policy regarding FOIA and the Privacy Act. The following information about conservation program contract

applicants may not be released: Names, Addresses, Telephone Numbers, Social Security or tax identification numbers, and amount of Federal funds requested.

The 2008 Act does not impede the sharing of information between and among USDA agencies. However, information may only be shared with Federal agencies outside of USDA for specific purposes under a cooperative program, but not for general regulatory or enforcement purposes. Aggregate or statistical information about applications may be described in news releases, Web sites, and other tools used to inform the public.

When an applicant becomes a participant, additional information is available for release. The following information about participants may be released through a FOIA request: Names, limited address (State, city, or county), and conservation program contact obligation amount. Additional restrictions about the release of address information apply to some corporate and nonprofit business types. For more information, consult the NRCS General Manual GM–120, Part 408.

*Comments*

The other comments are discussed by the following categories: Applicant eligibility, operator of record requirements, control of land, land eligibility—general, land eligibility—agricultural operation, land eligibility—NIPF, and ineligible land.

**Applicant Eligibility***Comments*

A number of respondents expressed concerns about overarching Farm Bill eligibility requirements such as the treatment of landlords and tenants, Adjusted Gross Income (AGI) provisions, and actively engaged in farming determinations handled through the Farm Service Agency (FSA). One commenter requested NRCS coordinate closely with FSA.

*NRCS Response*

NRCS is coordinating closely with FSA regarding FSA’s rules for legal farming arrangements. NRCS recognizes FSA responsibility in maintaining farm records and intends on utilizing these records, to the extent practicable, as a basis for program participation. However, NRCS will ensure that producers who would have an interest in acreage being offered receive fair treatment which NRCS deems to be equitable. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant’s

eligibility to participate in the contract as a tenant.

#### *Comments*

NRCS received a comment that it is important when making AGI determinations that the current Internal Revenue Service rules governing income allocation apply. Accountants and other tax professionals are aware of these rules and knowledgeable when using them to make the necessary allocation amounts to spouses and other members of an entity. The Farm Bill provides an extensive list of income sources considered to be farm income for purposes of the farm AGI calculation. One area that is not specifically addressed is the categorization of wages earned from a farming corporation or other entity. Many times, partners or members of an entity receive a salary from the operation rather than or in addition to a distribution. NRCS should state clearly that this income is considered farm income for AGI purposes.

#### *NRCS Response*

The 2008 Act provides very specific AGI information applicable to all current Farm Bill programs. AGI clarification applicable to all Farm Bill programs is found in 7 CFR 1400.500.

#### *Comments*

NRCS received a comment urging the agency to factor into AGI determinations the fact that the Internal Revenue Service arbitrarily limits annual losses a producer can claim to \$300,000 if the producer receives Farm Bill benefits, which if left unaddressed, could underestimate the extent of a producer's losses while exaggerating AGI, unfairly resulting in program ineligibility.

One commenter expressed that FSA "actively engaged in farming" rules should apply. These rules include crop share landlords and tenants as actively engaged, but reduce the ability of absentee investors to benefit and reduce the opportunity to create "paper" farms whose only purpose is to enable the beneficiary to collect payments in excess of the payment limit through well established payment limit avoidance devices that will not be captured by direct attribution. A reference to the actively engaged in farming rules applying to CSP should be added between paragraphs (g) and (h) in 1470.24. In addition, the definition of "producer" in 1470.2 should be modified to say "actively engaged in agricultural production or forest management" instead of just "engaged."

#### *NRCS Response*

No changes are made to the rule in response to these comments. NRCS is legally obligated to offer the program to everyone meeting eligibility. To apply for the program, the applicant must be the operator of the land in the FSA record system. An operator who is accepted and subsequently enrolled in a contract may include additional participants on their contract who may be landowners or others having control of the land enrolled in the contract and are included in the FSA record system. Such participants need to meet AGI requirements as well as Highly Erodible Land provisions and Swampbuster provisions. All participants included in a contract that receive funding will by law, be limited to the payment limitations set forth in the statute and the rule.

#### *Comments*

Two commenters requested NRCS establish reasonable procedures for reporting all members of a legal entity.

#### *NRCS Response*

It is FSA's responsibility to maintain customer records, including member information. FSA has forms available for entities to use to provide their member information; therefore, it is not necessary for NRCS to establish additional procedures. NRCS may obtain a copy of this information if needed. No changes are made to the rule in response to this comment.

#### **Operator of Record in FSA Records**

#### *Comments*

Nine comments were received on this topic. The commenters generally expressed dissatisfaction with the requirement that the applicant must be the operator of record in the FSA system. In their view, the requirement unfairly precludes certain legitimate producers or landowners from participating.

#### *NRCS Response*

The policy related to operators' results from a finding from the 2006 Office of the Inspector General (OIG) CSP audit that identified NRCS failed to detect improper identification of producers' agricultural operations. OIG recommended that NRCS complete ongoing coordination with FSA to utilize their existing data to independently verify applicant information for similar programs implemented in the future. However, NRCS recognizes this is a significant concern and amends paragraph

1470.6(a), Eligible applicant, to read as follows.

"To be an eligible applicant for CSP, a producer must be the operator in the FSA farm records management system. Potential applicants that are not in the FSA farm records management system must establish records with FSA. Potential applicants whose records are not current in the FSA farm records management system must update those records with FSA prior to the close of the ranking period to be considered eligible. NRCS may grant exceptions to the "operator of record" requirement for producers, tenants, and owners in the FSA farm records management system that can demonstrate to the satisfaction of NRCS they will operate and have effective control of the land for the term of the proposed contract." This change is not retroactive, and therefore, will not apply to the 2009 applications or participants. Paragraph 1470.6(a)(1) is deleted and subsequent paragraphs are redesignated accordingly. The new paragraph (a)(1) is revised to remove the requirement that the producers have "documented control" and to add a requirement that they have "effective control."

#### **Control of Land**

#### *Comments*

NRCS received multiple comments on this requirement. Commenters expressed dissatisfaction with the requirements that a producer must show control of the land for 5 years. NRCS received a comment recommending it work to the fullest extent allowed under the CSP statute to include rental acres in the program. Not doing so would mean that most modern commercial operations would be effectively excluded from CSP and the conservation incentives the program provides. It could be a significant administrative burden for both producers and NRCS personnel to modify the CSP contracts annually to accommodate changes in leased landowners. One commenter recommends that it be optional for a producer to enter leased land into the CSP.

#### *NRCS Response*

NRCS considers it a sound business practice to enter into contracts where the land will remain under contract for the full contract period. However, NRCS does recognize the need for flexibility to address those situations where operators have oral leases or other similar arrangements. Therefore, NRCS will modify its policy to remove the requirement for documented assurance

from the owner that the tenant will have control and will accept operator self-certification of control of the land for the contract period. Applicants who utilize the self-certification process will be subject to an annual review and verification process to confirm they maintain control throughout the contract period. In situations where operators do not anticipate having control of the land for the required period, such operators would not have effective control of that land and such land would not be considered part of their agriculture operation. NRCS does not expect applicants to project the unknown (*e.g.*, health, death, business failures, etc.); as long as applicants believe they will have the necessary control at the time of enrollment and for the required period of the contract, they are eligible.

### Land Eligibility

#### Comments

Five respondents recommended that NRCS accept managed grazing land as cropland so it qualifies for a higher payment, ranks higher, and can support some enhancements not available in the pasture category. Operators who use cropland as pasture should be rewarded, not penalized by a lower CSP payment; one commenter felt the program should enable those who harvest wind to participate by expressing if the respondent grew crops to make biofuels they could participate; if they harvest wind they cannot; and one commenter requested NRCS implement the program in a size neutral manner. Producers of all sizes and descriptions are involved in cotton production and should have equal opportunities to access conservation programs.

#### NRCS Response

NRCS does not want to establish policy that may have an unintended consequence of encouraging producers to convert pastureland to cropland. Therefore, NRCS is establishing a "pastured cropland" program designation to provide a more accurate payment rate due to higher forgone income costs associated with maintaining a grass-based livestock production system on land suitable for cropland. The existing activity payment rate for pastured cropland will be higher than the pastureland rate. All technical assessments and determinations are completed as pastureland. Since the details regarding payment rates are not included in the regulation, no changes are made to the rule.

CSP does recognize wind power used to power agricultural operations on the

farm through the CMT and enhancements offered by the program. However, land that is used solely for wind production does not meet the CSP definition of agricultural land as no "agricultural products or livestock" would be produced on the land.

No changes are made to the rule in response to these comments.

#### Comments

Two commenters requested NRCS clarify that the Conservation Security Program contracts may be eligible for CSP.

#### NRCS Response

NRCS retains the requirement that land enrolled in the Conservation Security Program is not eligible. After the Conservation Security Program contract expires, the land becomes eligible.

#### Comments

One commenter requested clarification of the term "other lands." The commenter requested NRCS identify what this term entails and what are the standards for demonstrating appropriate level of conservation on these lands that will determine eligibility and compliance. The rule itself is somewhat concerning in that it specifies that these areas must not have readily observable erosion or point sources of contamination such as gullies, manure runoff, or pesticide runoff. It is important to note that "agriculture storm water runoff" is not a point source and is allowed by Federal law under the Clean Water Act. The commenter encourages NRCS to revisit this element to make sure the standard of conservation sought on these lands is not a hindrance to farmer participation or conflicts with Federal law, particularly since payments will not be administered for practices on these lands.

#### NRCS Response

NRCS recognizes the concerns with using the words "point source" and will strike that language from procedures for assessing "Other lands." "Other lands" must be free from readily observable erosion, gullies, manure runoff, pesticide runoff, or other similar environmental concerns for the applicant to be eligible for the program.

### Agricultural Operations

#### Comments

NRCS received a comment urging USDA to provide clear, detailed guidance about how it would implement "substantially separate" provisions to enable prospective

applicants to determine if they would be able to participate on the business model their operation uses.

#### NRCS Response

The regulation identifies factors that will be used by applicants to determine whether operations are "substantially separate." Factors include equipment, labor, management, and cultivation or production practices. NRCS intends to clarify how these factors are used in procedures and guidance for producers.

#### Comments

One commenter expressed that the goal in the final rule is to make CSP simple and easy for CSP to be of real, concrete, and practical assistance to farmers struggling to deal with their real and immediate conservation and environment (needs); another expressed concern about treatment of eligible acres "agricultural operations" and rented land in the context of CSP contract requirements that are viewed to be unnecessarily restrictive and limiting; NRCS also was questioned about whether there is a statutory requirement that requires all of an applicant's operation to be covered by a contract. Section 1238E of the Food Security Act, as amended by the 2008 Act, says only that eligible land "shall include all acres of an agricultural operation of a producer, whether or not contiguous, that are under the effective control of the producer at the time the producer enters into a stewardship contract" (§ (b)(3)). While all such acres may be "eligible," there is no requirement that the applicant enroll all these eligible acres as the rule requires. If this language does not require the entire operation to be enrolled, we encourage NRCS to strike this requirement from the rule and instead adopt a more flexible approach that is fully reflective of the program's objective to provide comprehensive solutions working from a conservation systems' approach.

Another commenter recommends that NRCS require an operator to enroll a sufficient quantity and type of acres from the producer's operation to ensure that their operation's potential contribution to the area's resource and priority resource concerns can be properly addressed. This is not a fixed percentage of an operation, and it cannot be established in a one-size-fits-all approach.

#### NRCS Response

NRCS retains the requirement for the agricultural operation from section 1238E, *i.e.*, eligible land will include all acres of an agricultural operation whether or not contiguous, that are

under the effective control of the producer at the time they enter a stewardship contract, and operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations, as determined by the Secretary. NRCS gives producers the opportunity to enroll owned land and rented ground for which they have effective control. NRCS amended paragraph 1470.6(b) to provide clarification that a participant may submit an application(s) to enter into additional contract(s) for newly acquired eligible land, which would then compete with other applications in a subsequent ranking period.

### **Nonindustrial Private Forest Land**

#### *Comments*

NRCS received comments both in favor of and opposed to the agency policy of separating out NIPF in the enrollment process, so that forest land will be ranked and enrolled separately.

One commenter encourages NRCS to develop a way to track NIPF within their ProTracts system so that producers with both NIPF and agricultural lands are not required to file two applications.

By special rule no more than 10 percent of acres enrolled nationally in any fiscal year may be NIPF ownerships. This model potentially provides a larger contract payment to the landowner, but by the total enrollment calculation may overstate the benefits.

#### *NRCS Response*

NRCS determined it is necessary to maintain forest land applications separate to be able to meet the legislative requirement of enrolling no more than 10 percent of the annual acres enrolled nationally in any fiscal year in NIPF. NRCS chooses to retain the process established.

### **Section 1470.7 Enhancements and Conservation Practices**

#### *Comments*

Forty-six comments were received on section 1470.7, "Enhancements and conservation practices." This section identifies that a participant's decisions describing the additional enhancements and conservation practices to be implemented under the CSP contract. The list of comments reflects the large selection of potential enhancements. The public provided input on managed grazing, pesticide management, energy, innovative practices, wildlife, forest management, and organic production.

#### *NRCS Response*

NRCS received numerous recommendations on innovative enhancements. NRCS is open to suggestions for additional enhancements on all land uses and welcomes innovative ideas for consideration. However, the program constraints limited how the financial assistance funds could be used. In order to achieve a national average rate of \$18 per acre, enhancement activities emphasize management-based actions rather than structural practices. It is NRCS' intention that recommended changes and improvements will be incorporated in future ranking periods. New enhancement ideas will be evaluated and incorporated as time permits for future ranking periods. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter recommends NRCS require cover crops and rotational grazing, rather than rewarding uninterrupted commodity crops that rob the soil.

#### *NRCS Response*

Program requirements to implement specific conservation activities would eliminate some farmers from eligibility for CSP. Instead, CSP recognizes there are many paths to conservation stewardship and asks questions in the CMT and offers enhancements that cover this spectrum. In addition, there are five enhancements available to producers that encourage the use of cover crops to manage nitrogen, break-up soil compaction, and improve biodiversity. The resource-conserving crop rotation is another way CSP promotes crop diversity that includes grass and legume.

#### *Comments*

NRCS received criticism that the list of potential enhancements is long and exhaustive, and it will benefit potential program participants to know the ranking of each enhancement for both conservation performance effectiveness and relative cost. The commenter assumes that these rankings are, in turn, used in the CMT, and as such, the rankings reflected in this document should be subject to review and modification by the State Technical Committee to fully reflect that State's needs and priorities.

#### *NRCS Response*

The conservation values for each enhancement are posted on the NRCS Web site. NRCS welcomes input and thoughts on the relative value of each

enhancement, but NRCS retains the right to make final decisions on the technical and resulting environmental impact of each enhancement. NRCS will continue to improve the development of information related to the CMT. NRCS recognizes the success of the program is dependent on a thorough understanding of resource needs and producer commitments, prior to entering a contract. Further, NRCS is looking at options to adjust the choices available by ranking pool, State, or region.

#### *Comments*

One commenter urged NRCS to consider offering enhancement practices for forest land that are innovative or not offered by other USDA programs, and to strongly consider potential environmental benefit when offering practices and ranking applications. The commenter recommended specific enhancements, some of which are already on the CSP enhancement list.

#### *NRCS Response*

The NIPF land enhancements are currently under review with changes in number of enhancements and scope to be completed before the next ranking period. NRCS will evaluate the enhancements recommended and will make its determinations public when changes, if applicable, are complete. The recommendations do not require a change to the rule.

#### *Comments*

NRCS received a recommendation that section 1470.7 be rewritten and re-titled to include both new enhancements and conservation practices to be implemented under a contract, as well as existing enhancements and conservation practices to be actively managed and maintained under a contract.

#### *NRCS Response*

NRCS chooses to retain the current information in section 1470.7 as this section is intended to address additional conservation activities to be adopted through CSP. Section 1470.23 deals with maintenance and management of existing activities.

#### *Comments*

Two commenters expressed that enhancements should reflect that commitment to flexibility and continuous improvement should allow for reasonable adaptation and modification during the life of the contract. Two commenters requested new enhancements be added to the toolbox of offerings as new conservation technologies are developed.

One commenter recommended allowing landowners 3 years to adopt forest enhancements, including forest stewardship plans which should be encouraged.

#### *NRCS Response*

The program has mechanisms in place to accommodate changes in operations during the life of the contract. The program allows change to the schedule or installed enhancements by allowing enhancements to be substituted as long as the conservation performance determined by NRCS is equal or better than the conservation performance offered at enrollment. In addition, a participant will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant.

CSP rules require that all enhancements be adopted by the third year of the contract. No changes are made to the rule in response to this comment.

#### *Comments*

One commenter recommended a thorough review of all CSP enhancements before the next ranking period and appropriate steps taken to improve benefits to fish, wildlife, and their habitats.

One commenter was opposed to implementing new practices through CSP. The commenter expressed that if farmers are interested in adopting new practices, they should be encouraged to apply for funding for the new adoption under EQIP instead.

#### *NRCS Response*

The program's statutory language provides that the term conservation activities mean conservation system, practices, or management measures that are designed to address a resource concern.

#### *Comments*

One commenter identified an interest in farmers that transition to a lower carbon footprint of production, including increasing soil carbon using managed intensive grazing systems, reduced tillage, and reduced pesticide use while another proposed a new category encompassing many of the CSP enhancements to help some of the endangered species, pollinators, and wildlife that are being pushed out by increasing housing developments. This should include inclusion and priority of biodiversity enhancing and organic farming practices.

#### *NRCS Response*

NRCS recognizes the merit of these conservation measures, and they are currently reflected in the CMT questions and enhancements offered through the program.

#### **Innovative Enhancements**

#### *Comments*

NRCS received multiple suggestions of practices and activities to add to the list of enhancements.

#### *NRCS Response*

NRCS conducted a thorough review of all CSP enhancements for all land uses, as well as evaluated the recommendations from the public. As a result, NRCS updated its enhancement list and adopted a new concept for the second ranking period related to the selection and implementation of enhancements. Certain enhancements will be offered as "bundles" while others will be offered individually. The bundling concept enables participants and the nation to realize conservation benefits from the synergy that results when activities are implemented as a system. For example, NRCS established a Sustainable Ag Bundle that includes enhancements for locally grown and marketed farm products, water quality, soil quality and plants, and beneficial insects.

The environmental benefits of each bundle will be reflected in the score and the resulting payment level. NRCS amended the rule in 1470.7(c) to make known the ability to incorporate bundled enhancements in the stewardship plan.

#### *Comments*

Another commenter requested NRCS provide clarity on the development and regular review of incentives for Socially Disadvantaged Farmers or Ranchers, Beginning Farmers or Ranchers, and Limited Resource Farmers or Ranchers, and Indian Tribes.

#### *NRCS Response*

The CSP does not provide incentive payments for historically underserved individuals. However, NRCS policy requires State Conservationists to address access to program enrollment for Socially Disadvantaged Farmers or Ranchers and Beginning Farmers or Ranchers through the establishment of special ranking pools. In addition, Indian tribes are exempt to payment limitation per legislation as stated in section 1238G(g) of the Statute.

#### *Comments*

NRCS should view the development of new technologies and management strategies in an entrepreneurial manner that fosters the addition of beneficial new activities as they are developed. New enhancements should be added to CSP's toolbox of offerings as new conservation technologies are developed in order to accelerate the adoption of conservation technologies with positive environmental benefits that will address societal needs.

One commenter noted that continued funding of large scale farms and conventional practices seems like others are continuing to get resources while innovators get nothing. Small scale farms are increasing across the country and at the same time, more CSA orientated marketing continues to spiral upwards as well.

#### *NRCS Response*

NRCS recognizes the value of small scale farms as well as large farms. As a result, the scoring and ranking system used for CSP is size neutral. No change is made to the rule in response to this comment.

#### **Conservation Practices and Resource-Conserving Crop Rotation**

#### *Comments*

Two commenters recommended that cover crops that best hold the soil in place whether legumes or perennial grasses with the least disruption causing erosion must be rewarded.

#### *NRCS Response*

Cover crops are given performance points in the CMT. There are also five CSP enhancements available that promote the adoption of cover crops in various ways. No changes are made to the rule in response to this comment.

#### *Comments*

Commenters supported the concept that resource-conserving crop rotations and managed rotational grazing should be rewarded through CSP.

#### *NRCS Response*

NRCS agrees and these activities are recognized in scoring and enhancements through CSP.

#### *Comments*

One commenter expressed that CSP is essential to the development of a better, more sustainable agricultural sector in this country, and therefore, it is necessary that the program provide support on a wide range of important practices like crop rotation.

Forty-nine commenters recommended that resource-conserving crop rotations

and management-intensive rotational grazing should receive strong support or high ranking and payment points. Cropping systems built around resource-conserving cropping and livestock systems based on rotational grazing are superior conservation approaches with multiple environmental benefits. They should be fully rewarded whether they are an ongoing conservation system or a newly adopted one.

#### *NRCS Response*

Applicants who choose to implement a resource-conserving crop rotation are recognized because they receive a separate payment for this activity above and beyond other payments they may qualify for under the program. NRCS recognizes the conservation value of crop rotations and rotational grazing. Both are scored highly in the CMT, and enhancements are offered for both of these activities. No changes are made to the regulation in response to these comments.

#### *Comments*

Another commenter expressed that it is also important that the funding amounts recognize the critical role that organic crop and livestock systems, resource-conserving crop rotations, and management-intensive rotational grazing play in strong and productive stewardship.

#### *NRCS Response*

CSP uses the CMT in evaluating the environmental impact that a management system provides. Those systems that provide the highest benefits receive the most conservation performance points resulting in higher ranking and increase payments. No changes are made to the rule in response to the comment.

#### *Comments*

A number of comments show support for small farmers like the one that expressed the concern that small family farmers raising a diversity of crops and animals, should receive high ranking and payment points based on resource-conserving crop rotations and management-intensive rotational grazing.

#### *NRCS Response*

Applicants in this category that are addressing natural resource concerns will score very well in the CMT and will have the potential for high stewardship levels. Recognizing that CSP may not offer financial resources to smaller operators that would encourage participation, NRCS amended the regulation in paragraph 1470.24 to add

authority for the Chief to offer a minimum contract payment amount.

#### *Comments*

Farmers coming into newly adopted resource-conserving crop rotations and management-intensive rotational grazing (in addition to those who presently implement those practices) need to be able to sign-up for CSP.

#### *NRCS Response*

CSP scoring, ranking, and payments are based on both existing conservation activities and additional conservation activities that the applicant chooses to implement. This process allows for farmers who are at different levels of conservation to participate. NRCS uses an environmental focus and not a commodity-based focus when implementing CSP. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter expressed that in reviewing the interim final rule and the materials posted on the NRCS Web site in reference to the rule, the resource-conserving crop rotation and its specific special payment is clearly a priority for NRCS. However, exact implementation of this provision still appears uncertain. As NRCS moves forward with this provision, the agency should strive to attain the objective of greater soil conservation and the building of carbon in the soil rather than a prescription that can only be met with the addition of a perennial crop or forage crop to the rotation.

#### *NRCS Response*

The resource-conserving crop rotation job sheet, describes the benefits of a resource-conserving crop rotation that includes reduced wind and water erosion, increased soil organic matter, improved soil fertility and tilth, interrupted pest cycles, reduced depletion of soil moisture or reduced need for irrigation in applicable areas, and provided protection and habitat for pollinators. Each State developed a list of plants and crops that met the criteria of a resource-conserving crop. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter expressed that conservation methods in crop rotations are vital for a sound, conservation-based farm. Adequate rewards for resource-conserving methods such as green manure plantings and forage, is important to ensure such practices are implemented and maintained. Well

managed rotational grazing systems for livestock are another superior conservation method with value-added gain to the environment.

#### *NRCS Response*

NRCS agrees with these comments as reflected in the questions in the CMT and the CSP enhancements. No changes are made to the rule.

#### *Comments*

One commenter expected real change with the implementation of the CSP. The commenter expressed that the new CSP actually rewards farmers who are early adopters and using long-term rotations or grass-based livestock systems.

#### *NRCS Response*

Questions in the CMT are designed to analyze an existing crop production system and award conservation performance points for those systems that provide the greatest environmental benefit. Systems that include greater crop diversity reduce tillage and high levels of nutrient and pest management receive more conservation performance points, increasing chances to be selected for funding. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter was critical of the ranking process in situations where a producer has to change a rotation that is not on the list, and then the producer would have to go through some ranking changes each time.

#### *NRCS Response*

Participants can modify stewardship plans to address unforeseen contingencies, as long as they select enhancement activities with the same or greater environmental benefits. Further, NRCS does not consider a participant in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including disaster or related conditions, as determined by the State Conservationist.

#### *Comments*

One commenter recommended that NRCS seek opportunities to increase bee forage when implementing other conservation practices, such as cover crops and resource-conserving crop rotations.

#### *NRCS Response*

NRCS feels that it has adequately addressed the concerns in the CMT and with the activities offered through the program. NRCS will conduct continuous

reviews to incorporate innovative ideas for future ranking periods. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter requested clarification on whether or not orchard and vineyard crops are eligible for the resource-conserving crop rotation. Wine grape growers typically use a resource-conserving crop in their vineyards which meets the first definition, a perennial crop for soil fertility. Will vineyards be eligible for the supplemental payment?

#### *NRCS Response*

Resource-conserving crop rotations are not applicable for orchards or vineyards. A resource-conserving crop rotation is only applicable where there is an annually planted crop in the rotation.

### **On-Farm Research and Demonstration**

#### *Comments*

NRCS received one comment on this provision. The commenter recommended the addition of a new paragraph (3) in 1470.2 to stipulate that NRCS will make available to eligible applicants design protocols and participation procedures for participation in CSP on-farm research and demonstration projects. In addition, the commenter recommended that either (a) current point values for on-farm research and demonstration be enhanced, or (b) that on-farm research and demonstration be taken out of the point system for payment purposes and compensated in a more traditional manner.

#### *NRCS Response*

NRCS amends section 1470.2(f)(1) to read as follows:

(f) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program issues, including the identification of priority resource concerns for a State, or the specific geographic areas within a State, and design protocols and participation procedures for participation in on-farm research and demonstration and pilot projects.

States are working with their respective research institution in educating them on the use of on-farm research and demonstration projects to increase the list of available projects for the next ranking period.

### **Section 1470.8 Technical Assistance**

#### *Comments*

Section 1470.8, Technical assistance, explains that NRCS or other technical service providers (TSP) could provide the technical consultation for installing conservation activities under CSP.

Two commenters recommended that more CSP money to be available for technical assistance through TSPs or cooperative agreements with entities such as State wildlife agencies in order to meet the anticipated program demand.

#### *NRCS Response*

States have an option to enter into cooperative agreements with TSPs or other agencies to assist in delivering the program. However, it is important to mention that the program constraints of managing the program to achieve a national average of \$18 per acre for financial assistance and technical assistance will limit program servicing options.

### **Technical Assistance on Forest Land**

#### *Comments*

A number of comments were received regarding technical assistance on forest land. Commenters expressed support for CSP with concerns on how the expertise and technical assistance will be delivered at the field level to NIPF; technical assistance for many NRCS forest projects is provided by agreement with the State Forestry Department, and in some cases, technical expertise is very limited; and respondents recommended that NRCS utilize the extensive network of forestry expertise through the Forest Stewardship Program, which includes State forestry agencies, consulting foresters, and other partners working to deliver technical assistance to NIPF landowners.

#### *NRCS Response*

NRCS field office staffs have diverse technical backgrounds and in some cases have forestry and agroforestry expertise, but in those situations where they do not, they will seek professional forestry assistance. NRCS has staff foresters in many States that provide technical guidance and training to field offices and can assist field offices with planning and application questions. In States without staff foresters, the field offices will assist the forest owner in seeking assistance from either State agency foresters, forestry TSPs, or other private consulting foresters in the local area who are providing forestry planning and application assistance such as forest stewardship planning.

### **Pollinators**

#### *Comments*

One commenter recommended that NRCS further this objective by (1) designating a liaison at NRCS charged with working with beekeeping industry interests, and (2) establishing and convening a working group of beekeepers, qualified research and extension specialists, and interested agricultural producers to help conduct the necessary review and revisions.

Another commenter expressed that USDA should realize the full potential conservation assistance and incentive programs to help farmers and ranchers establish and maintain habitat for managed and native bees, and provide training to NRCS and other technical assistance providers to make them aware of the new Farm Bill authorities and the importance of habitat for managed and native bees and how programs can be used to assist farmers and ranchers.

#### *NRCS Response*

NRCS has a Pollinator Initiative through which it is pursuing increased attention to pollinators from a variety of approaches. A few of these approaches include the following: Establishment of an NRCS Liaison with beekeepers and with the United States beekeeping industry to ensure that the needs of beekeepers and honey bees are appropriately addressed in NRCS pursuits; revision of NRCS Conservation Practice Standards to encourage establishment of pollinator habitat and discourage management practices harmful to pollinators; implementation of the recently-developed NRCS Plant Materials Centers pollinator action plan which includes the field-testing of seed mixes for pollinators from an eco-region-specific perspective and crop-specific recommendations of plant materials that will provide preferred and extended pollinator forage and refugia for beneficial insects helpful in pest management; inclusion of a large number of opportunities for matching funds to create and enhance pollinator habitat through a variety of financial assistance and easement conservation programs; development of Web based training for NRCS staffs and for our partners and customers focused upon pollinators and their habitat requirements; and implementation of the NRCS pollinator communications plan for awareness-building concerning the critical roles of pollinators and what individuals can do to help us sustain pollinator habitat and the environmental services they provide.

NRCS takes seriously its responsibilities to ensure its field office staffs have adequate training to work with organic farmers. Individual States have conducted numerous training sessions on conservation planning with organic producers. A national teleconference on organic certification has been conducted, and plans are in place to work with several private organic groups to provide training to NRCS State specialists on organic farming systems. No changes are made to the rule in response to this comment.

#### *Comments*

One commenter questioned why NRCS included a definition of TSP. The commenter did not see where the term is used or referenced in the rule. The commenter expressed that the rule leads one to conclude that NRCS must provide all technical assistance relative to the CSP.

#### *NRCS Response*

Section 1470.8 states that NRCS may provide technical assistance to an eligible applicant or participant either directly or through a TSP as set forth in 7 CFR part 652.

### **Subpart B—Contracts and Payments**

#### **Section 1470.20 Application for Contracts and Selecting Offers From Applicants**

#### *Comments*

Section 1470.20, "Application for contracts and selecting offers from applicants," identifies procedures associated with application acceptance, contract application requirements, and the application evaluation process. NRCS received 20 comments on the application process. Many of the commenters expressed frustration related to the amount of paperwork necessary to participate in CSP.

#### **Application Process**

Seven commenters expressed that there is too much paperwork or the program is too complex; other comments included that NRCS needs to control costs and if an applicant is rejected from program enrollment, the basis for the rejection needs to be explained to the applicant. NRCS received comments that information requirements should be fair, reasonable, and limited to data that is necessary, relevant, and related directly to determining an applicant's potential CSP participation. An applicant's personal details and proprietary operational information must be protected at all times by the Department; respondents urged NRCS to

avoid onerous and invasive CSP documentation requirements and to be fair and reasonable. One commenter acknowledged that good recordkeeping is integral to managing a successful farming operation; however, due to the newness of this program, some producers may not have records for all of the activities conducted that would aid them in their application for CSP. The commenter has concerns about how farmers will be treated in situations where they have recently acquired farm ground where previous records would not be available to the new operator, which could limit their eligible acres.

#### *NRCS Response*

No changes are made to the rule in response to the comments.

All applicants are provided written notification of all determinations related to their application.

NRCS designed the CSP to collect as little information from the applicants as feasible. It is always difficult to balance the information necessary for quality assurance and minimize burden on customers. NRCS feels strongly that proper documentation is required to avoid improper use of program funds. NRCS does not collect records to be kept in NRCS field offices. Records are used to verify that the information provided by the applicant is accurate when conducting the onsite field verification and State quality assurance process.

Acreage eligibility is not determined by the presence or absence of records; however, it may impact the applicant's ranking score. The applicants are required to offer all acres on their operation that are under effective control at the time of entry into a conservation stewardship contract. To participate in CSP, applicants need to be able to provide some form of verification for those activities that they are credited in the CMT. There are many ways that information can be verified during the onsite field verification such as equipment, crop residues, visible signs of erosions, existing practices on the ground, photos, receipts, existing conservation plans, aerial photos, etc. It is the applicant's responsibility to provide accurate information of the existing system that they will be compensated through program payments.

NRCS will evaluate ways to minimize burdens on producers while following policies and procedures to ensure that NRCS is accountable for the use of program funds. It is critical that participants maintain and supply information to verify eligibility. NRCS has the proper supporting contract

documentation to ensure fair and consistent determinations are made.

#### *Comments*

Another area of interest related to the availability of information. Four commenters expressed that applicants should have access to enhancement points during the application process. For farmers to make good decisions, farmers should have access to the number of points each enhancement is assigned to make the best decision for their operation and for the overall environmental benefit of their contract. Three commenters expressed that the list of potential enhancements is long and exhaustive, and it will benefit potential program participants to know the ranking of each enhancement for both conservation performance effectiveness and relative cost. We assume that these rankings are in turn used in the CMT and, as such, the rankings reflected in this document should be subject to review and modification by the State Technical Committee to fully reflect that State's needs and priorities.

#### *NRCS Response*

NRCS has made available to the public the conservation performance effectiveness values for all activities offered through the program as well as for all the inventory questions. In addition, NRCS developed two detailed documents explaining how the points are used in the tool. This information is located at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html).

No changes are made to the rule in response to these comments.

### **Conservation Performance Ranking Score**

#### *Comments*

One commenter indicated that what is unclear is how the activity list relates specifically to the ranking process used in CSP contract approvals, if at all, and how this list relates to the CMT. NRCS should clarify how this list relates in this regard.

#### *NRCS Response*

The CMT is utilized to evaluate CSP applications using a point based system for environmental benefits. The CMT evaluates existing and proposed new activities to calculate conservation performance points that will be used for ranking and payment purposes. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter encouraged NRCS to allow one application for producers

with agricultural lands that also contain NIPF. Another commented that the contract application requirements and ranking pool protocols for NIPF are not specified.

#### *NRCS Response*

NRCS deemed necessary the separation between NIPF from agricultural land applications to be able to meet the legislative requirement of not more than 10 percent of the annual acres enrolled nationally in any fiscal year may be NIP. However, NIPF applicants follow the same application requirements and ranking protocols that agricultural land applications follow. No changes are made to the rule in response to the comment.

#### **Ranking Process**

##### *Comments*

NRCS received nine comments related to the ranking process. The majority of the comments pertained to implementing CSP in a size neutral manner. The commenters encouraged NRCS to resist efforts that would place unnecessary size and income restrictions on CSP participation, especially if those restrictions go beyond the provisions Congress specifically included in the CSP authorization. CSP is a program that must be designed in a way that allows participants to be ranked and evaluated on the environmental merit of their on-farm activities, regardless of the overall size of their operation. One commenter expressed that CSP puts more emphasis on change. NRCS needs to be careful about what kind of change is being directly or indirectly promoted with taxpayer money. In the two sign-ups for the old CSP, the highest ranking applications were often continuous no-till row crop producers. With the emphasis on change, those applicants who are changing to no-till will rank high.

##### *NRCS Response*

The CSP is designed to allow participants to be ranked and evaluated on the environmental merit of their on-farm activities regardless of the overall size of their operation. The CMT evaluates existing and proposed new activities to calculate conservation performance points that will be used for ranking and payment purposes. The CMT is size neutral ensuring that all operations, despite the size of each operation, have the same potential to accrue a similar number of points.

NRCS is following the program's statute by crediting producers for the conservation performance from the

existing and proposed system. In addition, NRCS is following the ranking factors stated in the statute. Three out of the four ranking criteria are related to new conservation activities. However, a review of the first sign-up data is being conducted, and any needed adjustments will be made before the next ranking period.

##### *Comments*

Two commenters responded with concerns related to wildlife issues; one commenter expressed concern if cost is figured into the ranking criteria, that wildlife and forest health enhancements will be negatively weighted because of the installation cost, low CSP payment, and no cost-share opportunities available for the producer.

##### *NRCS Response*

Cost is not a ranking factor unless there is a tie in ranking scores between two or more applications. When there is a tie, the application that represents the least cost to the program will be given priority. The CSP does not provide cost-share payments but rather compensates producers for the conservation performance.

##### *Comments*

One commenter supports a ranking scheme with no weighting for the adoption of new enhancements by the producer.

##### *NRCS Response*

NRCS is currently implementing the ranking factors without preferential treatment to any one factor. No changes are made to the regulation in response to this comment.

##### *Comments*

One commenter recommended NRCS award points for selecting conservation practices that address State, regional, or national resource concerns such as Gulf of Mexico hypoxia, Northern Bobwhite Conservation, and grassland bird initiatives.

##### *NRCS Response*

Conservation practices are used in CSP for the purpose of encouraging producers to meet additional stewardship thresholds. NRCS is evaluating options and methodologies to allow for State and regional adaptation of the CMT at some future point.

#### **Conservation Measurement Tool**

##### *Comments*

NRCS received 19 comments on the CMT. Most of the comments requested additional conservation considerations in the CMT. NRCS received both

positive and negative comments related to CMT and agency implementation. For example, one commenter expressed the CMT is an attempt to provide a nationwide "level playing field" in ranking applicants and determining funding status across a large number of resource conservation areas. For this, the NRCS deserves some commendation. Unfortunately, the draft tools available for review thus far do not give clear indications of how some of the ranking decisions were made, nor how points are applied to producers' activities. Another commented that estimation of a true baseline of environmental conditions before and after CSP implementation is not possible.

##### *NRCS Response*

NRCS appreciates and understands the positive and negative comments on CMT. The first implementation of CMT was a learning process. Changes are already planned for CMT based on experiences at the field level. As field personnel become more familiar with the use of CMT, inconsistencies in its implementation will be minimized. In addition, NRCS will conduct additional training for field personnel on CMT to ensure consistent application and interpretation across the country.

NRCS entered into an agreement with the University of Illinois to conduct a scientific validation to assess its performance in evaluating environmental benefits.

##### *Comments*

One commenter expressed that the CMT considers the relative physical effects of existing and proposed conservation activities to estimate improvements in conservation performance. It does not measure true environmental benefits, e.g., tons of carbon sequestered or tons of soil saved.

##### *NRCS Response*

NRCS agrees with this commenter. The CMT was developed for the CSP as a means of providing an ordinal ranking of applicants based upon the level of conservation stewardship on the applicant's operation. The CMT does this by asking a series of questions about the outcomes of agricultural and ranching practices in terms that a typical landowner should be able to answer. In other words, it provides a means of saying that the environmental outcome on applicant A's farm as a result of the implementation of farming and conservation activities is better than applicant B's. However, NRCS will explore potential future additions for quantitative capability to the tool. For

the CMT to measure benefits will require incorporating other modules that can measure change such as Agricultural Policy Environmental Extender, Voluntary Reporting of Greenhouse Gases-Carbon Management Evaluation Tool, Nitrogen Loss and Environmental Assessment Package, etc.

#### *Comments*

Another commenter expressed that the CMT does not adequately encourage intensive tillage management for residue management or soil tilth.

#### *NRCS Response*

CMT seeks only to judge the results of conservation actions (or lack thereof). The encouragement comes as applicants see what actions they need to take in order to rank highly or increase their level of payment. CMT does in fact reward applicants through increased score that practice tillage techniques that maintain high residue levels and limit soil disturbance. In addition, by choosing enhancements that increase residue and otherwise improve soil quality, applicants can further increase ranking and payment levels.

#### *Comments*

One commenter expressed understanding that the CMT has been developed to determine if an applicant meets the basic stewardship threshold for entry into the program. The CMT should also be capable of assisting further in the ranking process by calculating and accounting for the practices of those farmers that have achieved a much higher level of conservation, above and beyond the entry level threshold. It must be remembered that many of the nation's best land stewards adopted and implemented these conservation practices with their own money because it was the "right" thing to do. In time, CSP will have the majority of the farms enrolled, but the poor land stewards must be aware of the successes of the best land stewards. The new CSP should continue to inspire farmers to be ranked among the best land stewards in the country.

#### *NRCS Response*

The CMT scores the exceptional steward much higher than the applicant that just barely meets eligibility. NRCS acknowledges that the number of enhancements available and the environmental points granted to a "barely eligible" producer could result in an application to be ranked higher than for an exceptional steward. NRCS will be reviewing the stewardship eligibility levels for each resource

concern to ensure that good and poor stewards are properly indentified. This could ultimately have some effect on who is eligible for the program and better identify the good steward.

#### *Comments*

One commenter recommended the CMT needs to better recognize and score certain practices. For example, terracing is a conservation practice that was advocated for decades by the Soil Conservation Service and is still part of the FOTG. Terracing is a vital component in controlling water erosion, especially where residue production is low. No-till or cover crops are not always an acceptable substitute for terraces, and CMT scoring must recognize that fact. Producers who have installed and farmed with terraces have incurred significant costs in additional time, machinery, and labor requirements. Ignoring both the benefits and producer costs, the CMT recognizes terracing with at most only 45 points (questions 13 and 14) and specifically only 16 points (question 14).

#### *NRCS Response*

While NRCS recognizes the significant contribution that some applicants have made to improve the farming landscape by installing terrace systems, CMT is designed to judge the conservation outcome of activities rather than the capital and labor input to install the practices. Farmers make choices based on the land they farm, the crops they choose to grow, and other site-specific factors. In most cases, there are multiple paths to achieve a good conservation outcome. The CMT does not try to define the path, rather it tries to judge the result of the choices the farmer makes. The farmer is free to make these choices based on their operational goals.

#### *Comments*

One commenter opined that the CMT is particularly flawed in being heavily weighted towards practices that are impractical for some regions. Although it is recognized that the CSP is outcome based, it will not further national conservation efforts to exclude some regions. The CMT needs to be expanded with questions and points that match a reasonable conservation outcome for a given region. It also needs a mechanism to omit questions inappropriate for a particular region.

#### *NRCS Response*

NRCS will take this concern under advisement and look for opportunities for States or regions to customize the

CMT within the constraints of a national program.

#### *Comments*

One commenter questioned in what manner does the CMT account for the costs (or lack thereof) of given practices/enhancements? Question 11 provides up to 64 points for the use of a no-till system. However, in many instances no-till systems are actually adopted for cost savings. This is in conflict with the language in section 1470.24 and with World Trade Organization requirements. Given these payment requirements, how do practices/enhancements such as no-till (which is potentially income enhancing) warrant high CMT points when significant conservation practices such as terracing (which clearly has high costs) are assigned much lower point values?

#### *NRCS Response*

NRCS developed CMT to determine the environmental benefits points using conservation physical effects and does not take into account costs of activities. The payment process takes into account costs incurred, income foregone, and to the extent practical, environmental benefits.

#### *Comments*

One commenter expressed that the CMT asks no questions related to strategies for the management of herbicide resistance in weeds. With reduced till/no-till systems relying on the availability of effective herbicides (especially glyphosate in which resistance is an increasing problem) this topic must be addressed.

#### *NRCS Response*

The CMT includes a section on pest management with the highest scoring being the use of an integrated pest management plan (IPM). The IPM can include a host of activities that range from the use of herbicides to avoidance techniques that rely on management strategies. This plan provides sufficient options to address herbicide resistant weeds and reward applicants that choose environmentally sound options without CMT prescribing the necessary treatment.

#### *Comments*

One commenter responded that other than referencing residue cover at planting, the CMT asks no major questions about management for the control of wind erosion. This is an example of an issue where regional practices/enhancements must be more fully addressed by the CMT. This commenter also expressed that despite

the otherwise heavy emphasis on plant diversity and cover crops, the CMT does not recognize the identical role that facilitating postharvest volunteer plant growth provides in wheat-fallow rotations.

#### *NRCS Response*

NRCS will take the comments under advisement to ensure that additional clarification is included in the CMT.

#### *Comments*

One commenter recommended that NRCS refine the CMT to allow for the creation of more precise resource concern categories within the land use category of forest land. This would allow States to set priorities for conservation on forest land in the same manner that they do for other land use types when selecting resource concerns and priority resource concerns for cropland, rangeland, or pasture.

#### *NRCS Response*

At this time NRCS does not anticipate changing the micro resource concerns that are considered by CSP. Cropland, pastureland, rangeland, and forest land are evaluated across the same 27 micro resource concerns.

#### **Ranking—Environmental Benefits**

##### *Comments*

NRCS received 102 comments on the ranking for environmental benefits. The majority of the comments pertained to organic farming and livestock systems and ranking applications based on environmental outcomes. NRCS received a few comments in support of small farms. The comments are summarized as follows:

#### **Organic Production**

NRCS received 43 comments related to organic production. The majority of these commenters expressed that organic crop and livestock systems should get extra consideration because of their environmental benefits. One commenter requested NRCS make the rules flexible enough to fit the various needs of organic farmers, since their overall system is beneficial but does not always fit the narrow guidelines for conventional farming. A number of commenters expressed that organic and those transitioning into organic should be treated similarly. Ranking and payment point values should be roughly equivalent for ongoing organic management and new conversions or transition to organic. Another commenter expressed that the points given to organic farmers are quite fair, and it is apparent that many organic farming practices are sustainable. Those

practices may be adopted, at least in a modified form, by non-organic farms as a way to become more sustainable and protective of the environments.

Not all the commenters supported giving organic and livestock producers special consideration. One commenter expressed that organic and livestock practices should not be given higher ranking or points because it is organic. The end result is what matters; if conventional agriculture or organic agriculture accomplishes the same result, the reward should be the same. Another commenter expressed that organic farming is not sustainable, and the added tillage to control weeds only increases soil erosion. The use of manure encourages phosphorus run off, and there is not scientific proof that their producer is any better for humans than that produced with no-till.

#### *NRCS Response*

The CMT evaluates the impacts of organic systems in the same manner as for non-organic systems. All producers are required to meet the same stewardship threshold for each of the resource concerns. The CMT evaluates the environmental benefits provided by an operation regardless of operation size, land use, or production system.

#### **Environmental Outcomes**

##### *Comments*

NRCS received 36 comments recommending that CSP applications be ranked and paid based on environmental outcomes. Examples of specific comments include: Conservation strategies that yield the largest environmental performance and provide multiple benefits should receive priority ranking; it would be great if subsidy payments would shift towards CSP; effective application ranking that prioritizes enrollment of producers promising to do the most to address the important resource concerns in a particular area will be critical to maximizing the environmental benefits CSP can deliver; and reward good outcomes such as enhanced wildlife habitat, better watershed protection, and higher regard for air quality. These outcomes should be rewarded whether the conservation practice was adopted this year or in the past so that farmers with good practices are not punished for starting conservation early.

#### *NRCS Response*

The CMT will credit producers with higher points if their existing and proposed system is addressing the priority resource concerns identified by the State for the geographic area they are

competing in. In addition, existing and proposed activities' performance are calculated by resource concern for each land use ensuring the producers are rewarded for multiple benefits they are producing.

#### **Small Farms/Farm Size**

##### *Comments*

Two commenters urged NRCS to encourage farms of all sizes to practice conservation methods on their farms.

#### *NRCS Response*

NRCS promotes conservation methods on all farms. The program is designed in a way that allows participants to be ranked and evaluated on the environmental merit of their on-farm activities, regardless of the size of their operation.

##### *Comments*

NRCS received comments expressing disappointment from applicants whose applications were not selected for participation. Commenters indicated their applications were rejected due to their size, lack of sufficient income, or cropping history.

#### *NRCS Response*

The CSP has no minimum income or size limitation. However, the CSP statute provides that land used for crop production after June 18, 2008, that had not been planted, considered planted, or devoted to crop production for at least 4 of the 6 years preceding that date is not eligible. Certain exceptions apply. NRCS recommends the commenters contact their local NRCS office for additional clarification.

#### **Resource-Conserving Crop**

##### *Comments*

One commenter recommended mechanical row crop cultivation with equipment leaving high levels of surface residue should be assigned some points when it results in a reduction of herbicide use. Another commenter recommended NRCS give more credit for spring planted small grains with an under seeding of a legume or legume/grass mix. This is a common practice among sustainable farmers here in the Midwest.

#### *NRCS Response*

CMT considers residue amounts and the use of pesticides (including herbicides) separately. The applicant has the opportunity to be scored for high residue levels under questions 2 and 11. Pesticide related questions are dealt with under question 15. In the case described above, high residue

levels could be part of an IPM plan to reduce the application of herbicides.

The use of a nurse crop of grass or legume should be credited under question 3 as a cover crop depending upon how it is handled after the small grain is harvested and under question 4 for increased crop diversity. It might also gain points from question 12 for wildlife considerations, again depending on how it is handled after harvest.

#### **Fallow Practices**

##### *Comments*

One commenter recommended that fallow practices are not all the same and should not all be ranked the same. The commenter suggested a way be established to account for conservation fallow such as chemical fallow. In arid agricultural regions, the purpose of this fallow type is to idle the land for a growing season, and conserve and even recharge soil moisture while maintaining a cover of previous crop stubble serving to protect the soil from wind and water erosion.

##### *NRCS Response*

NRCS recognizes that fallow with high residue was not accounted for in the current version of CMT. This oversight will be corrected for future sign-ups.

#### **Wildlife Habitat/Riparian Buffers**

##### *Comments*

One commenter requested riparian buffers wider than 50 feet should be rewarded. Currently the highest ranking is for buffers with a width of 33 feet or 2.5 times the stream channel width, but wider buffers capture more nutrients and provide real wildlife habitat.

##### *NRCS Response*

Water quality research has shown that most of the water quality benefits are attained in buffers in the first few yards. While we recognize that additional width is beneficial, in order to reduce the complexity of the CMT questions, we chose to craft question 7 under the Water Bodies/Water Courses section to ask about the minimum width necessary for water quality. Additionally, question 7 in Cropland and question 5 in Pasture will reward an applicant for buffers that are wider than the minimum for water quality. NRCS is not changing the riparian buffer requirements.

##### *Comments*

The buffer scoring should also reward higher levels of forest canopy in regions where forests were the predominant land cover prior to conversion to

agricultural production. The current version does not differentiate between forests and shrubs or grasses.

##### *NRCS Response*

In the CMT, Questions 7 and 8 on Water Bodies/Water Courses ask questions about the quality of the vegetation in riparian buffers. Buffers that are composed of native vegetation should be scored higher than those that have non-natives.

##### *Comments*

Scoring for manure/pesticide application setbacks should be tiered to reward greater distances from water bodies. The current version only rewards setbacks greater than 33 feet. Higher scores should be available for setbacks greater than 100 feet (#9 on Water Bodies/Water Courses Existing Activity Conservation Performance).

##### *NRCS Response*

Water quality research has shown that most of the water quality benefits are attained in buffers in the first few yards. While we recognize that additional width is beneficial, in order to reduce the complexity of the CMT questions we chose to craft question 9 under the Water Bodies/Water Courses section to ask about the minimum width necessary for water quality.

##### *Comments*

One commenter requested NRCS provide special consideration to the environmental benefits of protection of wildlife habitats and corridors, promoting biodiversity and protecting species from the dangerous effects of overuse of pesticides.

##### *NRCS Response*

The CMT accomplishes this through a series of questions that address (1) the occurrence of native vegetation in buffer areas, (2) the current level of management of pesticides, and (3) additional enhancements the applicant will apply that will reduce pesticide exposure to the environment and improve the quality of wildlife habitat. Applicants that do all of these activities to protect and benefit wildlife should score well in the CMT.

##### *Comments*

A third commenter expressed that the commenter devoted many areas of their farm to providing habitat for reptiles and amphibians. A true environmentalist works from the bottom of the food chain up. These types of land stewards should be rewarded for protecting this base, not penalized.

##### *NRCS Response*

There are many opportunities in the CMT to recognize fish and wildlife activities an applicant is currently implementing, as well as many opportunities for enhancements to improve fish and wildlife habitat on a farm.

#### **Pollinators**

##### *Comments*

NRCS received requests that landowners be given credit in the scoring system for pollinator-related values of conservation practices that provide habitat for native and managed pollinators. Two examples are (1) the ecosystem services that native pollinators provide, and (2) giving beekeepers permission to place managed hives on their land to take advantage of natural forage. To the extent innovative approaches are developed that offer premium CSP payments, the same principles could apply. The scoring system could also be weighted to provide additional value to practices that provide multiple environmental benefits.

##### *NRCS Response*

NRCS recognizes the value of pollinators to agriculture and the environment. NRCS agrees to make changes in the CMT to specifically include pollinator habitat in areas that are managed for wildlife habitat. This will provide scoring in the CMT for those applicants that are managing non-cropped and non-pastured areas for pollinator habitat.

##### *Comments*

Another commenter recommended NRCS consider awarding additional points for selecting additional conservation practices that address State, regional, or national resource concerns.

##### *NRCS Response*

The CMT currently does this by rewarding applicants that choose to address additional State priority resource concerns during the life of the contract.

#### **Other**

##### *Comments*

One commenter requested NRCS consider ALL the environmental ramifications AND the food ramifications of its decisions. Another commenter expressed that CSP should continue to reward farmers who are farming at a high stewardship threshold and should provide an incentive to maintain those high standards.

### *NRCS Response*

NRCS is following the legislation and program purpose. The CSP is a new program with a new purpose. The program is a voluntary conservation program that encourages producers to address resource concerns in a comprehensive manner by:

- (1) Undertaking additional conservation activities; and
- (2) Improving, maintaining, and managing existing conservation activities.

Applicants that are farming at high resource stewardship levels will score very well on the existing activities which will be reflected in program payments. NRCS is not authorized to provide payments solely for improving, maintaining, and managing conservation activities in place on the operation. Conservation programs are not authorized to make incentive payments. Under CSP, participants are paid for conservation performance; the higher the operational performance, the higher their payment will be.

### *Comments*

Another commenter expressed that a practice designed to achieve wildlife or other conservation practices could generate significant benefits for native and managed pollinators by integrating modest enhancements such as selections of pollinator-beneficial plants. Similarly, conservation efforts for native and managed pollinators will advance other natural resource objectives including the new natural resource challenge of mitigating and managing the adverse impacts of climate change.

### *NRCS Response*

A review of CSP enhancements and practices is currently underway with recommended changes and improvements to be incorporated into the next ranking period. Of the 82 CSP enhancements that were available during the first sign-up period, 27 included a wildlife focus or purpose. In addition, over 70 percent of the funding pools identified wildlife related issues as one of their priority resource concerns. No changes are made to the rule in response to these comments.

### *Comments*

One commenter encouraged NRCS to consult with USFS on analysis of environmental benefits. Considerable data and research guidance on such matters is available from the USFS State and private forestry, as well as the recently established USDA Office of Ecosystem Services and Markets.

One commenter recommended NRCS give additional weight to projects that yield significant public benefits beyond the boundaries of the enrollee's property. For example, NRCS could develop a suite of priorities that pre-qualify proposals that achieve one or more of the following: Nitrogen and sediment run-off benefits in targeted watersheds.

### **Greenhouse Gas Sequestration Benefits**

One commenter expressed that some areas of resource concerns seem undervalued. For example, the fertilizer decisionmaking questions in the operation profile focus on soil nutrient tests, but the California perennial crop growers have long used the more sophisticated plant tissue testing methods which are not mentioned until you reach the "enhancement" section.

One commenter requested NRCS encourage proposals/awards to farms/farmers that make a contribution to lessen CO<sub>2</sub> emissions from sunlight oxidizing organic material from bare soil on America's Farms.

### *NRCS Response*

CSP currently rewards farmers who limit tillage and keep the soil covered either with residue or cover crops and practice advanced nutrient management techniques. This is done by questions in the CMT and through enhancements that are targeted to these concerns.

### **Application and Ranking—Weighting of Ranking Factors**

#### *Comments*

NRCS received numerous comments regarding policy options for the weighting of ranking factors. The comments were evaluated and given consideration in the development of the CEA. To add clarity to the issue of weighting ranking factors, NRCS amended 1470.20(d) to read, "Weighting of ranking factors. To the extent CSP objectives, including implementing new conservation, are not being achieved as determined by the Chief, NRCS will adjust the weighting of ranking factors in order to place emphasis on improving and adding conservation activities." Additionally, NRCS adds a new paragraph (e) regarding State and local priorities that enables the Chief to develop and use additional criteria for evaluating applications to ensure national, State, and local priorities are effectively addressed.

### **Weight Between Existing/Additional Conservation Activities**

#### **Supporters of Equal Weighting**

Overall, commenters expressed concern over how NRCS will weight new and existing practices. Numerous comments were received expressing concern that if NRCS selects those who have considerable conservation measures to adopt over those who have actively been practicing higher levels of stewardship, NRCS will be punishing those who are practicing good stewardship. A recurring theme within the comments is that NRCS should not discriminate against early adopters and that the sole measure should be the environmental benefits secured by the total conservation system regardless of the timing of adoption of various parts of the system.

Thirty-one comments were received expressing that CSP should equally balance the benefits of both existing and new practices. The most important aspect of CSP needs to be the measure and rewarding of conservation benefits secured by a farm regardless of the timing or adoption of various conservation measures or practices. Farmers who have adopted conservation measures should get the same incentive as a farmer who newly adopts conservation measures and agrees to continue them into the future. This policy will reward farmers who have been doing good things for the environment, it will give them an incentive to continue the conservation practices, and it will encourage surrounding farmers to do more conservation to qualify for CSP incentives. Ultimately this will result in better conservation of our environment overall. Another commenter who supported this position recommends existing and new practices have equal merit in determining participation because existing practices require intensive management to sustain them.

Similarly, 45 commenters expressed that farmers applying to participate in CSP should be ranked on environmental outcomes regardless of whether the conservation practice was previously adopted. A system that emphasizes the existing environmental outcome should be the ultimate goal.

Two commenters requested that conservation enhancements score higher than related conservation practices, and that point values for existing conservation score equally with new conservation. Moreover, the baseline portion of the CMT should allow farms to accumulate points for the full range of conservation practices and

enhancements that are in the non-baseline portion of the CMT.

#### *NRCS Response*

NRCS acknowledges the concerns and will seek to clarify that the CSP is not penalizing good stewards of the land. CSP is a competitive program that rewards applicants for their existing conservation system as well as for the proposed increased conservation performance. NRCS has designed the program as presented in the 2008 Act. The ranking factors used to evaluate an applicant's conservation performance are provided by the legislation, in which three out of the four factors are crediting producers for additional conservation activities. NRCS recognizes this is a significant concern for good stewards of the land, and while reviewing the first sign-up data, will consider all the comments made about this topic. NRCS will take in consideration all comments received for future analysis and if adjustments are needed, will be made before the next ranking period.

It is important to emphasize that each applicant's existing conservation activities are evaluated and used to determine if they have met the minimum stewardship threshold for resource concerns. Those applicants with a high level of conservation are more likely to exceed the minimum stewardship threshold on more resource concerns resulting in a higher ranking score, increasing their chances of being selected for program funding.

Good stewards are encouraged to adopt additional conservation activities while increasing the environmental benefits they are providing which in turn will result in a higher ranking score and increase their chances of being selected for program funding.

NRCS acknowledges the concerns and will seek policy options that ensure that CSP does not penalize good stewards of the land.

#### **Supporters of More Weight on Additional Practices**

##### *Comments*

Not all commenters supported the equal weighting concept. Five commenters supported placing greater weight on additional practices. One commenter expressed that both the law and conference report, "encourage the Secretary to place emphasis on improving and adding conservation activities." Therefore, NRCS should follow this guidance by placing an emphasis in the ranking criteria for new practices adopted with less weight for existing practices. Another urged that greater emphasis and valuation be given

to scoring additional conservation practices and the increased outcomes they will provide. The third commenter urged implementation of the CSP consistent with statutory intent, with emphasis on rewarding landowners for additional conservation enhancements. Habitat loss and degradation is a major identified cause of decline for both native and managed pollinator populations. CSP provides economic reward to landowners to increase habitat as part of their farming, ranching, and stewardship actions.

Several comments suggested that more weight should be on existing practices. One commenter recommended that the program and its benefits be geared to those who have taken the steps to conserve their resources and that other USDA programs are available for those wanting to install new practices. Three others offer that the most cost-effective conservation practices are the ones already installed; therefore, early adopters should receive credit and not be penalized.

#### **Other Comments**

One commenter offered that during the most recent CSP application period, it was common for producers to have already enacted several of the enhancements listed. In many cases, compensation and recognition for these conservation efforts farmers have adopted on their own was not possible. There should be a way when establishing the producer's conservation activity baseline with the CMT that the questions asked and points offered correspond with the enhancements offered. The producer then would get credit in ranking factor 1 for those enhancements already adopted and correspondingly would be able to add them as enhancements and receive credit if they are not in practice.

One commenter recommended that if a producer receives credit for a practice as an enhancement, then a producer should receive the same credit for the practice if it is already implemented on their operation.

One commenter suggested that there needs to be a way within the CMT to address and give credit to farmers who have been extremely active in adopting conservation practices. If a practice is listed as an enhancement, then the producer that has already adopted that particular practice should receive equal points or credit within the CMT. If the CMT can be used to estimate the existing and proposed conservation performance, it should therefore be able to credit existing conservation practices.

#### *NRCS Response*

NRCS has thoroughly reviewed the questions in the CMT and the enhancements. Almost all of the enhancements are reflected either directly or indirectly in the CMT. The few that are not are inconsequential in terms of CMT scoring. Therefore, an applicant's current level of stewardship, even if it includes enhancement activities, should be reflected in the CMT score.

#### *Comments*

Seven commenters expressed that ranking and payment point values should be roughly equivalent for ongoing organic management and new conversions or transition to organic. Another recommended NRCS credit existing organic system plans with a specific baseline question and ranking score for existing conservation activities.

#### *NRCS Response*

The CSP evaluates each applicant's conservation activities as to their impact on seven resource concerns plus energy. No two systems will have the exact same impact on all resource concerns. Giving equal environmental benefits to an established organic system and one that is in transition would be penalizing the established organic producer at the expense of the one in transition. While over the course of time the transition farmer might catch up, the CSP rules require the conservation evaluation to be done on the system at the time of application. This same concept would apply to an organic system plan. While they all may meet the national organic plan rules, they all do not provide the same level of environmental benefits.

#### *Comments*

One commenter recommended that CSP continue to require additional practices, especially when the farm operator already is practicing multiple conservation practices.

#### *NRCS Response*

The CSP offers a defined, limited suite of management practices for the explicit purpose of encouraging producers to meet additional stewardship thresholds.

#### *Comments*

One commenter expressed that there are point values that are off by very large factors, well beyond any possible justification based on cost. For instance, NRCS estimates the payment range for newly adopted resource-conserving crop rotations at \$12–16 per acre, yet the payment for an existing resource-

conserving crop rotation as reflected in the baseline assessment points could be as low as \$1 per acre. This is a fundamental flaw in the current CMT that needs to be quickly addressed and remedied before the FY 2010 enrollment process gets underway. We have previously suggested different ways to fix this problem to the agency, and we are very interested in continuing to pursue practical solutions.

#### *NRCS Response*

NRCS respectfully disagrees with the comments. The contrast between payment for adopting a resource-conserving crop rotation and existing conservation activities is because they are compensated through two different payment types, not because CMT point values are off. By statute, CSP offers participants two possible types of payments:

(1) Annual payments for installing and adopting additional activities, and improving, maintaining, and managing existing activities; and

(2) A supplemental payment for the adoption of resource-conserving crop rotations.

NRCS received significant feedback from national, State, and regional organizations that emphasized the crop rotation provision's importance to the overall success of the program and the need to implement it in a comprehensive, meaningful manner. NRCS also found direction in the Farm Bill Joint Explanatory Statement of the Committee of Conference, which provided guidance that, "The Managers intend for the supplemental payment to encourage producers to adopt new, additional beneficial crop rotations that provide significant conservation benefits." With consideration to that feedback, NRCS used variable cost and price information to compare the difference in net-returns between "conventional" and "resource-conserving" crop rotations and arrive at the supplemental payment rate. Based on past program experience, NRCS believes this approach provides the level of meaningful compensation needed to encourage producers to adopt additional resource-conserving crop rotations and effectively use this aspect of the program.

#### *Comments*

This feature is of critical importance to sustainable and organic farming. The ranking and payment system, which is currently equally weighted between existing and new superior conservation, should be changed. USDA has indicated that serious consideration is being given to giving more weight to the adoption of

practices, resulting in smaller enrollment chances and smaller payments for farmers already practicing superior land stewardship.

#### *NRCS Response*

NRCS is currently evaluating the first sign-up data and will make adjustments needed to the program to ensure the program objectives are met.

#### **Stewardship Threshold**

##### *Comments*

NRCS received nine comments on the topic of stewardship thresholds. One commenter encouraged forest landowners to participate in CSP and in general believe that conservation assistance should be available for farm, ranch, and forest lands. Eligible participants should meet the stewardship threshold for one resource concern at the time of their application. The commenter believes that this approach will allow more participants to be eligible for the program.

Two commenters recommended that the applicant should be meeting the stewardship threshold on a minimum of three resource concerns that includes at least one priority concern. Requiring producers to meet at least three of the nine potential resource categories is more commensurate with the goal of encouraging producers to adopt a rewardable level of conservation on their farmed lands.

One commenter expressed that meeting the stewardship threshold and one priority resource concern is not adequate unless that priority resource concern includes wildlife. Wildlife enhancements provide multiple resource benefits to soil, water, and wildlife as well as greater conservation return for the dollars invested. Another commenter thought the level was adequate, providing it is considered an entry level requirement for the program. The entry level must be low, but at the same time not discourage the best farmers in America.

##### *NRCS Response*

No changes are made to the regulation in response to this comment. The statute provides that to be eligible to participate in the CSP, a producer will demonstrate, to the satisfaction of the Secretary, that a producer, at the time of the contract offer, is meeting the stewardship threshold for at least one resource concern and would, at a minimum, meet or exceed the stewardship threshold for at least one priority resource concern by the end of the stewardship contract.

NRCS does not have authority to require a producer to meet a specific

priority resource concern to participate in the program. The CSP authorizing language provides that three to five priority resource concerns are identified at the State level for each geographic area or region, in consultation with the State Technical Committee, as a priority for a particular watershed or area of the State.

##### *Comments*

One commenter requested each State be given the authority to increase the stewardship threshold if they wish to have a more targeted impact to achieve particular conservation goals.

##### *NRCS Response*

The CMT is not currently designed to allow States to make adjustments on scorings, thresholds, questions, or activities. The tool has been normalized and calibrated and to enable State access, will require a major rebuild of the tool that will also impact other program processes. However, NRCS will explore options to allow States to make adjustments as we move into the future with the program.

##### *Comments*

One commenter expressed that the statute provides a choice to the applicant to address one or more resource concerns as a condition of eligibility and requires them to choose one more priority resource concern to address either at the outset or during the first contract term, but does not provide discretion to the Department to require more. Therefore, the commenter does not recommend the agency consider changing the interim final rule provision.

##### *NRCS Response*

NRCS agree with the commenter and intends to maintain the provision in the interim final rule as stated in the legislation.

##### *Comments*

One commenter questioned how high is the stewardship threshold for the resource concern or priority resource concern?

Second, how comprehensive is the level of treatment required for each resource concern and priority resource concern, and is it truly based on resource outcomes and conditions?

##### *NRCS Response*

NRCS set the threshold numbers for each resource concern by running a nation-wide test on a sampling of farms. NRCS Conservationists judged the level of resource treatment on each farm, and the CMT was then run on each of the

farms. The resulting scores were compared to the level of treatment that was determined by the Conservationist. Threshold scores were then set at the average of the scores for the farms that were determined to be adequately addressing the resource concerns on the farm, what NRCS refers to as the Resource Management System level of treatment.

#### *Comments*

Third, is it possible that the priority resource concern might be the same as the resource concern? The answer to each of these questions will inform our understanding of whether the bar for participation in CSP has been set at an appropriate level.

#### *NRCS Response*

The resource concern and priority resource concern used to meet the stewardship threshold criteria must be different for the same land use. For example, an applicant is only meeting one resource concern, which also happens to be a priority resource concern at the time of application. That resource concern would meet the "one resource concern at the time of application" criterion. However, a different priority resource concern would need to be used to meet the "one priority resource concern at the time of application, or by the end of the stewardship contract" criterion.

#### *Comments*

One commenter expressed support for using EQIP practices that directly contribute to a CSP participant's ability to meet or exceed stewardship thresholds. It will both allow CSP to function properly and be an excellent use of EQIP, because the funds will be directed to meeting the stewardship threshold for priority resource concerns for the State or geographic area within the State. The commenter requested NRCS design a process that eliminates redundancy and minimizes paperwork in the sign-up process. The commenter urged NRCS to have this process ready for the 2010 sign-up period.

#### *NRCS Response*

NRCS agrees to address the recommendation by adding language to section 1470.7(c) as follows:

"CSP encourages the use of other NRCS programs to install practices that are required to meet the agreed-upon stewardship threshold only if the practice is not compensated through CSP."

### **Resource Concerns**

#### *Comments*

NRCS received several comments related to resource concerns. NRCS should include consideration of habitat and forage needs for both native and managed pollinators, requiring producers to address multiple resource concerns fits within the purpose of CSP to promote comprehensive conservation planning and to encourage producers to adopt new activities or maintain existing ones. NRCS should include the addition of a special provision for first-year beginning farmers or ranchers in the eligibility section (1470.20(b)(1) concerning resource concerns.

#### *NRCS Response*

Regarding eligibility, NRCS decided to adopt the statutory provision without additional restrictions in order to attract a broad spectrum of eligible producers. NRCS does have flexibility with how it ranks applications. The greater the number of resource concerns the applicant addresses and those planning on being addressed, increases the ranking score. Data from the first sign-up shows that 99 percent of applicants are meeting more than one resource concern at the time of application.

#### *Comments*

Another commenter expressed concern that the practices that rank "very high" seem targeted at Midwestern grain producers.

#### *NRCS Response*

No changes are made to the regulation. NRCS keeps the language in the interim final rule to be consistent with the language in legislation. Practices are scored based on the environmental impact they have across 27 micro-resource concerns regardless of physical location. Further, program allocations and ranking pools are established and operated at the State level. Applications do not compete across State boundaries or ranking pools.

### **Pollinators**

#### *Comments*

Several comments were received related to pollinators. Commenters asked NRCS to seek innovative ways in the CSP to maximize forage outcomes for honey bees and other pollinators; place emphasis on rewarding landowners for additional bee forage; enhance planting mixes to include plants that provide optimal forage for honey bees; and urged NRCS to allow planting mixes to be enhanced at the national and State levels by including

plants suitable for each region that provide optimal forage for honey bees. Additionally, NRCS received a number of specific recommendations to address the habitat needs of native and managed native pollinators.

#### *NRCS Response*

NRCS welcomes suggestions on additional enhancements from all partners. NRCS solicited input from a wide source of expertise and will continue to do so for future enhancements. NRCS will evaluate the recommended enhancements and will incorporate those viable for future ranking periods.

#### *Comments*

One commenter urged the Chief to direct the development and integration of appropriate additional criteria that adequately reflect the objectives of the new conservation provisions of the Farm Bill for native and managed pollinators as an important part of ensuring that national, State, and local conservation priorities address resource needs related to native and managed pollinators and the agriculture pollination and ecosystem services they provide.

#### *NRCS Response*

No changes are made to the regulation in response to this comment. NRCS will modify the questions in the CMT to specifically mention pollinator habitat as part of these questions. Pollinator habitat can be considered when answering the inventory questions, specifically question 7 under cropland and question 5 under pasture. In addition, the program offers an enhancement to Establish Pollinator Habitat for cropland, pastureland, rangeland, and forest land. In the 2009 sign-up this enhancement was in the top ten most popular enhancements selected by applicants.

### **Priority Resource Concerns**

#### *Comments*

NRCS received numerous comments on the topic of priority resource concerns. In the interim final rule, NRCS requested specific comments on whether wildlife should be a required resource concern, and as a result, many of the comments focused on wildlife. NRCS received the following feedback: NRCS should establish wildlife as one of the national ranking priorities by incorporating State wildlife action plans in the CSP ranking tool and require producers to address multiple resource and priority concerns, rather than just requiring all States to select "wildlife" as a priority resource concern. NRCS

should clearly require States to be more strategic by identifying particular indicator species or suites of species and specific habitats as priority resource concerns for at least one geographic area within the State. Forty-one respondents identified biodiversity and fish, wildlife, pollinator, and beneficial insect habitat to be specifically added as a priority resource concern; priority resource concerns related to the needs of native and managed pollinators should be incorporated, it is important that fish, forest, and wildlife resources be given adequate priority and attention; the agency should strongly encourage but not absolutely mandate that one or more wildlife habitat resource concerns be included among the up to five priority resource concerns in each watershed or State; NRCS should identify forage and habitat for agriculture pollinators—honey bees and native pollinators—as a national priority resource concern; State offices should be encouraged to make a similar determination, especially in States or regions where agriculture pollination services are important and where forage deficits are recognized as a limiting factor for healthy honey bees and native agriculture pollinators.

#### *NRCS Response*

Although the commenters preferred to include wildlife as a priority resource concern, NRCS has determined the decision will continue to be made at the State level in consultation with the State Technical Committee. NRCS prefers to have the resource concerns determined at the State level by people more familiar with the local issues. NRCS evaluated data from the initial program sign-up and determined it is not necessary to identify wildlife as a priority resource concern at the national level. Seventy-seven percent of the funding pools identified wildlife as one of the priority resource concerns. With such a high percentage of pools recognizing the importance of wildlife, the national designation seems unnecessary. Therefore, NRCS encourages commenters and others to voice their concerns or recommendations to the NRCS State Conservationist and the State Technical Committee in their respective State as to which resource concerns should be a priority in their State or area of the State.

#### *Comments*

Commenters questioned specific priority resource concerns selected by States.

#### *NRCS Response*

NRCS has chosen broader resource concerns categories which is consistent with the agency planning procedures. NRCS historically has planned to address soil, water, air, plants, and animal concerns. The recommended priority resource concerns fall under one or more existing categories that are used for CSP. NRCS encourages commenters and others to voice their concerns or recommendations to the NRCS State Conservationist and the State Technical Committee in their respective State as to which resource concerns should be a priority in their State or area of the State.

#### *Comments*

NRCS received suggestions regarding broad priority resource concern categories for State selection. Another commenter recommended biodiversity promoting Prairie Reconstructions (50 species or greater) as a priority resource concern.

#### *NRCS Response*

NRCS welcomes the suggestions to improve CSP and will consider recommendations related to priority resource concern categories. NRCS has included Prairie Reconstructions in the resource concerns under the Plants category. No changes are made to the regulation in response to this comment as the regulation does not include language on each priority resource concern.

#### *Comments*

Another commenter recommended farm energy efficiency and the reduction of direct and indirect fossil fuel based energy in agriculture needs to be more emphasized as a priority resource concern.

#### *NRCS Response*

NRCS already considers farm energy efficiency and the reduction of fossil fuels under the Energy category. No changes are made to the rule in response to the comment.

#### *Comments*

One commenter recommended that farms in impaired watersheds, listed by the EPA under section 303(d) of the Federal Clean Water Act, should be required to address water quality as one of their priority resource concerns. Another recommended, in addition to the priority resource concerns that are identified by the NRCS State offices, codify a suite of criteria tailored to ensure that CSP addresses targeted regional and national resource priorities that are inherently cross boundary and

multi-jurisdictional; for example, projects that produce measurable downstream outcomes in reducing nitrogen and sediment run-off in targeted watersheds (*i.e.* the Chesapeake Bay) that are shared by multiple States or projects that have measurable benefits in sequestering or preventing the release of N<sub>2</sub>O and other greenhouse gasses.

Three commenters recommended NRCS set priorities on specific resource concerns at the State and local levels in close coordination with the landowners that the program is targeted to serve. Such coordination will provide the best opportunity for CSP to fulfill Congress' intent of targeting the conservation needs of working agricultural lands and their operators.

One commenter encouraged strategic emphasis on "at least" one priority resource concern.

#### *NRCS Response*

No change is made to the regulation in response to these comments. The priority resource concerns are selected at the State level. States use a variety of resources to determine the priority resource concerns. NRCS agrees that the 303(d) list of waters reports on streams and lakes could be a good reference to assist States in determining the priority resource concerns for their geographic areas. In the initial CSP sign-up, 89 percent of the funding pools listed water quality as one of the priority resource concerns.

#### *Comments*

One commenter expressed, with the exception of unusual geographic circumstances where the consensus is that one priority resource concern is overwhelmingly important, the goal should be for landowners to meet more than stewardship threshold. Additional enhancements should be designed to meet more than one stewardship threshold where practicable.

#### *NRCS Response*

Most enhancements provide benefits to multiple resource concerns. Enhancements that produce multiple benefits across resource concerns are scored as such in the CMT. Producers will be rewarded for each resource concern individually.

#### *Comments*

One commenter recommended amending paragraph 1470.20(b)(2) to add "in addition to the resource concern described in (b)(1)" after the words "priority resource concern."

*NRCS Response*

NRCS agrees with the commenter and will amend paragraph 1470.20(b)(2) as suggested. The paragraph will read "Would, at minimum, meet or exceed the stewardship threshold for at least one priority resource concern in addition to the resource concern described in (b)(1) by the end of the conservation stewardship contract \* \* \*

*Comments*

Several commenters identified that resource and priority resource concerns for an area need to be specific, stable, and consistent to give producers confidence that bringing their operations up to the basic stewardship threshold level for one or more of the resource concerns may in fact lead to a CSP contract in the future. If the resource concerns change too often and in an unpredictable manner, CSP cannot serve as an effective incentive for operators to improve their performance.

NRCS heard from several commenters that it needs to provide clear guidance on how States choose priority resource concerns. One commenter requested NRCS take a close look at how all States selected priority resource concerns for the FY 2009 sign-up. States should choose priority resource concerns that are both specific and are, in fact, the most important environmental challenges associated with agricultural production in particular areas of the State. Another commenter suggested NRCS closely follow the definition set in the statute, and require States to select priority resource concerns for specific geographic areas.

NRCS received a comment that it should consider offering an incentive through higher acreage allocations to States that do a good job of implementing CSP to produce measurable improvements to specific habitat types and other specific priority resource concerns. Another commenter suggested States establish very broad priority resource concerns. NRCS also received a comment that the potential benefit of geographically-focused ranking pools may not be realized because it may be difficult to ensure that priority is given to applicants who offer to do the most to solve specific pressing resource concerns in each geographic area.

*NRCS Response*

NRCS will consider the recommendations for future ranking periods. NRCS will give States an opportunity to review the priority resource concerns to ensure they select

the most appropriate priority resource concerns that best represent the impairments and concerns in their areas for subsequent ranking periods.

Applicants who offer a management system that addresses the priority resource concerns selected for the geographic area will score very well and increase their chances of being awarded a contract. However, applicants are competing among other applicants with similar resource challenges. Program funding, State acreage distribution among ranking pools, and characteristics of the applicants within a ranking pool will be determining factors in whether an applicant is awarded a contract.

**Section 1470.21 Contract Requirements***Comments*

NRCS received four comments related to the contract requirements in this section. The comments are addressed separately.

One commenter expressed there is considerable discussion regarding "available funds." Should a situation arise that Federal funding is incomplete or not available for CSP, the farmer's continued contract obligation should be reduced proportional to the reduction in payment.

*NRCS Response*

NRCS believes this scenario is unlikely to happen as Congress recognizes the positive benefits on the environment produced by the CSP. However, in the event that funds are reduced, NRCS will make Congress fully aware of the impacts this action will have on participants' contracts and on the landscape. No change is needed to the rule in response to this comment.

*Comments*

One commenter requested NRCS create an exception that allows for a temporary suspension of practices or a temporary reduction in conservation performance for the installation of infrastructure and equipment necessary to undertake additional CSP enhancements. This exception could be administered by setting a specific timeframe and conditioned on a requirement that the project is anticipated to result in higher overall levels of conservation performance.

*NRCS Response*

NRCS understands there may be circumstances where a temporary reduction is justified when the reduction is very minor compared to an eventual much larger stewardship gain or the plan might include mitigating

activities to offset the temporary situation. In either case, it should be covered in the stewardship plan on a case-by-case basis and does not require any change in the CSP rule.

*Comments*

One commenter expressed that the 5 years of an operator's contract is not a very long time for an environmentally friendly conservation practice. The commenter suggested that 10 years of a landowner's commitment to a conservation practice is worth a lot more.

*NRCS Response*

No change in the rule is needed. NRCS is following a legislative requirement regarding the duration of the contract. A conservation stewardship contract will be for 5 years. However, at the end of an initial conservation stewardship contract NRCS may renew the contract for one additional 5-year period when the participant demonstrates compliance with terms of the existing contract and agrees to adopt new conservation activities.

*Comments*

One commenter observed that each of these provisions contains important applicant and participant rights and obligations about which they must be clearly and regularly informed during each of these CSP phases. Clear and regular NRCS guidance about these rights and obligations would give applicants and participants appropriate information to reinforce their ability to apply for or implement a CSP contract without reservation or uncertainty.

*NRCS Response*

Program contract requirements are explained in great detail on the Contract Appendix (Form NRCS-CPA-1202). The appendix is given to producers at the time of application. The Appendix is reviewed, accepted, and signed by the applicant before contract obligation and is incorporated into the contract by reference. Additional efforts to inform producers of their obligations are listed on the conservation performance summary report from CMT, producers self screening checklist, conservation stewardship plan, job sheets, and practice standards. In addition, NRCS continuously updates the CSP Web site with information pertaining to program requirements and participants' obligations.

*Comments*

Another commenter expressed that the conservation stewardship plan will

clearly be an important, integral part of any contract, but the plan development and oversight costs must be balanced with the implementation costs borne by the participating farm operator.

#### *NRCS Response*

Farm planning is an integral part of any agricultural operation, and developing and following a conservation plan does take time and effort. While financial assistance programs such as CSP compensate the landowner for many of the incurred costs of conservation measures, farm programs cannot cover all costs. The landowner (and the community) receives benefits from conservation activities in the form of sustainable crop and livestock yields, improved water quality, reduced labor, improved wildlife habitat, and many other monetary, social, and environmental benefits. NRCS requests that the commenter consider these benefits as off-setting the uncompensated planning costs of a conservation plan. No changes are made to the rule in response to this comment.

#### **Section 1470.22 Conservation Stewardship Plan**

##### *Comments*

NRCS received six comments related to conservation planning. One commenter recommended that the term “conservation stewardship plan” when expressed in the context of NIPF participation specifically reference the forest stewardship plan as the requisite plan to participate in CSP (pursuant to the Forest Stewardship Program, section 5 of the Cooperative Forestry Assistance Act of 1978). Another commenter expressed that nothing in the rule should prevent forest landowners with a FSP from participating in the program.

##### *NRCS Response*

No changes are made to the rule in response to the comments. The CMT is used to determine program eligibility, ranking score, and payment points. A FSP is not a requisite to participate in CSP. However, if a FSP exists it could be referenced in the conservation stewardship plan.

There is nothing in the rule that will prevent forest landowners with a conservation stewardship plan from participating in the program.

##### *Comments*

One commenter recommended, in paragraph 1470.22(b), NRCS add the words “maintained” after “managed.”

#### *NRCS Response*

No changes are made to the rule in response to the comment. The Conservation Performance Summary Report from CMT documents the existing system that the participants are required to maintain. This information is not duplicated in the conservation stewardship plan. By signing the contract, applicants agree to the conservation plan and to maintain existing conservation performance levels and achieve additional conservation performance improvements as identified on the Conservation Performance Summary Report by land use for the contract period.

##### *Comments*

One commenter identified that the CTA conservation plan approach has long dealt at the field level with the realities of conservation planning for farms that have sizable quantities of rental acres. The commenter recommends that NRCS draw upon this field level expertise with preparing conservation plans for farms, in combination with the CSP’s statutory direction to comprehensively address a farm’s resource concerns, to determine on a case-by-case basis how much of a producer’s acreage under their operational control must be enrolled in a CSP contract to make the conservation planning process work for that operation.

##### *NRCS Response*

No changes are made to the rule in response to the comments. However, minor changes were made to the rule in response to comments about control of the land. The rule was amended in 1470.6 to mirror the statute. The CSP statute states that eligible land will include all acres in an agricultural operation of a producer whether or not contiguous, that are under the effective control of the producer at the time the producer enters into a stewardship contract, and is operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations.

#### **Section 1470.23 Conservation Activity Operation and Maintenance**

##### *Comments*

Section 1470.23, “Conservation system operation and maintenance,” addresses the participant’s responsibility for operating and maintaining existing conservation activities on the agricultural operation

to at least the level of conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period.

#### **Operation and Maintenance**

NRCS received two comments regarding operation and maintenance. In particular, both respondents recommended changing “Operation and Maintenance” to “Management and Maintenance” to reflect accurately the statutory terms.

##### *NRCS Response*

NRCS agrees with the commenters and amends section 1470.23, Conservation activity operation and maintenance, to read as follows: The participant will maintain and manage existing conservation activities to at least the level of conservation performance identified at the time the application is obligated for the contract period and any additional activities installed and adopted over the term of the contract.

#### **Section 1470.24 Payments**

Section 1470.24, “Payments,” describes the types of payments issued under CSP, how payments will be derived, and payment limitations.

#### **Payments-In General**

NRCS received 53 comments on the topic of payments in general. These comments can be organized into subtopics including:

#### **Adjustments**

##### *Comments*

NRCS received three comments on adjustments to payments rates. One commenter urged NRCS to adjust payment rates based on the results of monitoring and evaluation and on-farm research and demonstration. Another commenter recommended if the payments are raised for any of the practices, they should be made retroactive to the farmers who sign-up this year. A third commenter strongly encouraged NRCS to clarify that CSP contracts may be modified to address additional resource concerns.

##### *NRCS Response*

CSP participants will receive an annual land use payment for operation-level environmental benefits they produce. Under CSP, participants are paid for conservation performance not for individual activities.

Payment supporting information used for establishing the 2009 national payment rates will not change for

contracts enrolled in the initial ranking period.

NRCS will not be modifying contracts to address additional resource concerns. Applicants will be evaluated based on the activities they have implemented and additional activities they commit to at the time of application that they are willing to install and adopt. NRCS will not allow contract improvement modifications that will increase annual payments in order to manage fund obligation amounts.

### Rewarding Existing Conservation

#### *Comments*

One commenter expressed that maintaining payments for farms already engaged in sound conservation methods will provide a network for such farmers and new and beginning farmers. Another encouraged NRCS to continue to work toward establishing equity in benefits paid to farmers for equivalent levels of conservation to ensure that farmers who work towards greater levels of conservation are recognized for their contributions. One commenter expressed that the payment rate should be the same for current and new activities. This commenter could not select several enhancements because the commenter was already doing them.

#### *NRCS Response*

The CSP Managers' Report provides that the managers encourage the Secretary to place emphasis on improving and adding conservation activities. In general it costs more to implement new practices than to maintain existing practices. NRCS intends to implement a split payment structure with one payment rate for existing activities and a higher payment rate for additional activities. NRCS' payment structure will recognize producer's conservation contributions regardless of the timing of implementation. The structure is designed to encourage participants to adopt enhancements to accelerate their conservation efforts. NRCS amended the rule in paragraph 1470.24(a) to add "A split-rate annual payment structure will be used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation." To further encourage additional activities, the final rule provides in paragraph (a)(2) that participants must schedule, install, and adopt at least one additional conservation activity on a land use in order for that land use to earn annual payments.

### Statutory Adherence

#### *Comments*

NRCS received a few comments related to whether payment rates adhered to statutory provisions.

Two commenters identified that NRCS gives no apparent explanation in the interim final rule's Summary of Provisions why it is requiring in subpart B, one- and three-year schedules for the completion of contractual CSP enhancements. Congress does not address this issue in the Farm Bill or the Statement of Managers. Absence of an explanation makes the provision appear arbitrary. It should be dropped from the rule because the schedules would unfairly and unreasonably limit a participant's flexibility and adaptability to achieve, productively and realistically, the targeted conservation benefits.

#### *NRCS Response*

No changes are made to the rule in response to the comments. The requirement that a participant must schedule, install, and adopt at least one activity in the first year of the contract is an agency policy and is incorporated into the final rule. NRCS chooses to retain the requirement to be consistent with other NRCS programs and to accelerate conservation benefits. The requirement that all enhancements must be scheduled, installed, and adopted by the end of the third year is a programmatic decision to ensure that program objectives are met and allow sufficient time to evaluate the conservation system. Participants will receive prorated annual payments over 5 years for the activities they install, adopt, and maintain. The policy to require all enhancements to be started by year three of the contract is designed to achieve conservation benefits on the land at a faster rate than if producers choose to adopt activities in year four or five of the contract.

NRCS believes this policy maximizes the environmental benefits produced, minimizes contract administration, and helps producers maximize their payments. Payments are based on the participant's performance which is calculated based on the potential and environmental benefits produced. The longer the activity is on the ground, the more environmental benefits they produce translating to a higher payment.

### Enhancements

#### *Comments*

Six respondents addressed the issue of payments for enhancements. NRCS received requests for higher payment

levels; one commenter expressed that Enhancement ANM11, patch burning to enhance wildlife habitat, does not pay enough to persuade producers considering the danger and work involved. FSA pays considerably more to burn entire patches of CRP; one commenter expressed a willingness to plant native shrubs, trees, create shallow ponds, and otherwise create a haven for wildlife on his property rather than mow 10 acres like all of his neighbors if a financial incentive were provided; one commenter opined that based on the intent of the law it appears a producer would only receive the maximum CSP payment from NRCS if they had addressed all resource concerns on their entire operation. If such is the case, then the producer would simply continue receiving payments with a contract extension as long as they continued to follow their plan. If a producer had not addressed all resource concerns, then higher payments could only be awarded if additional resource concerns were addressed.

#### *NRCS Response*

No changes are made to the rule in response to the comments. Participants are being compensated for existing conservation through the annual payment. However, legislation requires that payments are made for existing and new conservation activities.

The CSP presents a significant shift in how NRCS provides conservation program payments. CSP participants will receive an annual land use payment for operation-level environmental benefits they produce. Under CSP, participants are paid for conservation performance—the higher the operational performance, the higher their payment.

Participants' annual payments are not determined using the traditional compensation model where they receive a percentage of the estimated practice installation cost or a per acre rental rate. Instead participants' annual payment level will be unique for their operation and land uses based on the combined total of environmental benefits from existing and new activities.

#### *Comments*

One commenter recommended NRCS add in paragraph (a)(4)(i)—"and practices" after "enhancements" both times and add "practice" after "enhancement." In paragraph (b) and (b)(2) add "or improve" after "adopt."

#### *NRCS Response*

No changes are made to the rule in response to the comments. CSP allows producers to substitute enhancements.

Practices are not to be substituted as they are utilized to encourage producers to meet additional resource concerns. A practice substitution may not meet the stewardship threshold for a resource concern which may result in a producer being ineligible for the program.

#### Other Program Payments

##### Comments

Five respondents address the interrelationship between CSP payments and other program payments. One commenter recommended that producers be allowed to utilize programs, including EQIP and WHIP, to help fund the installment of enhancements as long as they do not duplicate payments on lands enrolled in CSP. In addition, NRCS should allow the use of other conservation programs to assist producers with meeting comprehensive stewardship goals. Using other conservation programs will shift some of the costs to these programs and more readily allow NRCS to meet CSP acreage and funding requirements.

##### NRCS Response

No changes are made to the rule in response to the comments. The policy related to the source of payments is designed to avoid duplication of payment. When an enhancement is scheduled to be completed in CSP through the CMT, the producer is receiving compensation for the enhancement through their annual payment rather than receiving a direct cost-share payment like they would through EQIP. The statute prohibits payments to participants for new activities that were applied with financial assistance through other USDA programs on the same land.

If an applicant wishes to install conservation practices or activities not included in the CSP contract, then other programs could be used to assist producers meet their goals.

##### Comments

One commenter recommended that the rule explicitly exclude from the CSP annual payment rate calculation, costs incurred for conservation practices, or enhancements applied with financial assistance through other USDA conservation programs.

##### NRCS Response

No changes are made to the rule in response to the comment. Legislation states that the amount of conservation stewardship payment will be determined and based, to the maximum extent practicable, on the following factors:

- (a) Cost incurred by the producer associated with planning, design, materials, installation, labor, management, maintenance, or training;
- (b) Income forgone by the producer; and
- (c) Expected environmental benefits as determined by the CMT.

##### Comments

One commenter strongly encouraged NRCS to improve estimated payment rates and clarify that CSP contracts can be modified to allow producers to participate in other Title II Conservation Programs such as CRP, EQIP, or WHIP.

##### NRCS Response

To manage CSP funding and meet legislative requirements, NRCS used the 2009 application period to arrive at a uniform payment rate per land use conservation performance point. NRCS modeled the annual land use payment rates using the following nationwide sign-up data from the 2009 application period pre-approved applications:

- (a) New and existing environmental benefits measured in conservation performance points generated by land use type;
- (b) Costs incurred and income foregone for conservation activities; and
- (c) Available program funding levels.

Land use payment rates represent the costs of existing and new activities per performance point proportionally adjusted to manage program payments to achieve the national average rate of \$18 per acre.

Each case where a potential modification could be needed will be evaluated in a case-by-case basis by the State to determine if contract provisions are being met.

Legislation prohibits land to be enrolled in CRP, WRP, or GRP and CSP at the same time. If a producer wants to transition out of the CSP contract to another land retirement or working land preservation program, the CSP contract will terminate with respect to the acres enrolled in the other program. The annual payment for the land remaining in CSP will be reduced in proportion to the acres removed.

It is also important to mention that CSP participants can participate in EQIP or WHIP, but must ensure they follow agency policy that prohibits the participants from receiving financial assistance from more than one program on the same land for the same practice or activity.

#### Public Information

##### Comments

One respondent addressed the need to keep the public informed. In addition, it

is essential that USDA keep participants and the public informed on a regular basis about its payment rate findings during the first ranking period. USDA is to be commended for its dedication to making payments more consistent and predictable because these factors will have a strong impact on future CSP participation rates, and most importantly, achieving the conservation benefits desired by Congress.

##### NRCS Response

No changes are made to the rule in response to the comments. NRCS agrees that it is critical to keep the participants and the public informed of program information on a regular basis. NRCS continuously posts information on the NRCS Home Page at <http://www.nrcs.usda.gov> to ensure producers are informed and processes are transparent. NRCS has posted a one-page "Payment for Performance" document to explain the process used to establish the national payment rates. This information, along with other important information related to the program, can be found at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html).

#### Fairness of Payments

##### Comments

Three respondents touched on the topic of fairness of CSP payments between farmers. One expressed that some have spent years increasing soil organic matter and nutrients, reducing soil erosion, and increasing beneficial wildlife habitat with our own resources while watching neighbors do just the opposite with intensive grain production on erodible land and having USDA pay them a subsidy for their actions; another expressed concern about huge sums of money for no-till planters of corn in Iowa as being unfair to small struggling dairy farmers that adopt practices that are much more sustainable in the long run; one recommended NRCS should be paying farmers for producing healthier soil, cleaner water, climate change mitigation, and greater bio-diversity instead of an approach that encourages farmers to get bigger, faster, better, and cheaper with little to no regard for the environmental impacts they have.

##### NRCS Response

No changes are made to the rule in response to the comments. The CSP provides an annual payment to contract holders for the combined total of environmental benefits from existing and new activities. Payments are not for specific conservation activities, instead

they are for the combined environmental benefits. The CMT calculated conservation performance for existing and additional conservation activities and benefits. It is computed by land use type for cropland, pastureland, rangeland, and forest land. The tool is size neutral, ensuring that all applicants regardless of the size or type of operation have the same opportunity to earn similar points.

### Establishing Payments

#### Comments

NRCS received 17 comments related to recommendations about how NRCS should establish payment rates including setting the payment rate at inordinately low levels perpetuates the ground being conventionally cropped. NRCS should be emphasizing paying good stewards over poor stewards who agree to do better; USDA should increase the payment levels for cropland and pastureland. The 2009 estimated payment ranges are not sufficient; using the first ranking period as a payment discovery period was a good idea; and the preamble and rule do not correspond. The preamble states "This retrospective payment approach will allow NRCS to field-verify applied conservation activities prior to contract obligation and payment." No part of paragraph 1470.24, references the same intent and procedure. A reference would clarify the rule for NRCS employees and program participants.

Other comments included payment point values should be roughly equivalent for ongoing organic management and new conversions or transition to organic; encouragement to clarify exact payment levels for satisfying particular resource concerns and for meeting other resource concerns; and comments seeking information about exact payments for program enrollment. Regarding the contract payments under CSP, the majority of the payments should be dedicated to the base contract payments rather than separate enhancement payment. Applicants should be giving them priority points based on their conservation value or effectiveness which would be added into the point total for the contract which in turn would establish the per acre price.

#### NRCS Response

CSP does not provide payments for individual activities. Applicants are ranked and paid based on the conservation performance points generated by the environmental benefits produced by the existing and new activities. NRCS has made information

available at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html).

#### Comments

For many landowners, the promise of CSP-generated income will not be sufficient to prompt actions that advance conservation practices that will meet resource concerns, including those for native and managed pollinators. However, "bundling" of multiple values for the multiple benefits that conservation practices provide, such as carbon sequestration and water quality nutrient trading, is an approach that offers considerable potential to generate a combined economic value to landowners that will stimulate increased adoption and integration of conservation practices into their operations. Support was expressed for both types of payments to reward innovation and to advance new conservation practices, particularly those that yield multiple conservation outcomes. NRCS received comments that the CSP payment should recognize the environmental benefits for adopting a practice not only on the actual acres, but also the benefits gained on adjacent agricultural or forest land.

#### NRCS Response

Environmental benefits are based on the actual amount of the activity the producers agree to apply versus the potential of land that could receive the treatment. It measures the environmental benefits generated by the producer.

#### Comments

Four respondents recommended payments be based on environmental outcomes.

#### NRCS Response

To be able to implement the program and meet legislative requirements, the following three criteria were the driving factors for establishing the payment rates:

(1) Contract payment by CMT point per land use fixed nationwide for four eligible land uses: crop, pasture, range, forest;

(2) National average payment less than \$18 per acre per year (includes technical assistance and financial assistance); and

(3) Payment limitations.

CSP makes payments for conservation activities that benefit both the landowner and community. The CSP program must be fair, equitable, and accessible to all landowners and easy to administer by government agencies. CSP cannot pay for all expenses incurred for conservation activities, but CSP can

offset some expenses. CSP encourages landowners to maintain and adopt new conservation activities.

NRCS amended section 1470.20 to add paragraph (h) to read, "NRCS will conduct onsite field verification prior to contract obligation to substantiate that the information provided by pre-approved applicants during the application process is accurate prior to contract obligation."

### Owners of Forest Lands

#### Comments

NRCS received three comments related to CSP payments and forest landowners. The rules propose payments for on-farm research, demonstration, and pilot testing. It is not clear if such payments are also available to NIPF components. The National Association of State Foresters recommends that forestry research and demonstration should also be eligible for annual payments.

#### NRCS Response

No changes are made to the rule in response to the comments. On-farm research and demonstrations and pilot projects are eligible for cropland, pastureland, rangeland, and NIPF. The protocols for the States to offer these activities can be found at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html).

#### Comments

One commenter expressed that it would seem apparent that NIPF would deserve the highest annual payment per acre to encourage people to continue to invest time and labor to benefit our environment.

One commenter expressed concern that the low payment per acre and no cost-share will also discourage participation, especially among forest landowners.

#### NRCS Response

No changes are made to the rule in response to the comments. Land use payment rates represent the composite costs of existing and new activities per performance point proportionally adjusted to manage program payments to achieve the national average rate of \$18 per acre. NRCS has supporting cost information to demonstrate that national payment rates were established following the established process and ensuring fairness with all land uses.

To manage CSP funding and meet legislative requirements, NRCS used the 2009 application period to arrive at a uniform payment rate per land use conservation performance point. NRCS modeled the annual land use payment

rates using the following nationwide sign-up data from 2009 application period pre-approved applications:

(a) New and existing environmental benefits measured in conservation performance points generated by land use type;

(b) Costs incurred and income foregone for conservation activities; and

(c) Available program funding levels.

#### Other

##### *Comments*

One commenter provided that the statement that no payment will be made for which there is no cost incurred or income forgone by the participant, is truly biased toward the individual who has in the past raped the soil, and now wants to possibly change his ways if you pay him enough. Not the spirit that CSP was intended to convey.

##### *NRCS Response*

No changes are made to the rule in response to the comment. NRCS is following CSP authorizing language that provides that the amount of conservation stewardship payment will be determined and based, to the maximum extent practicable, on the following factors:

(a) Cost incurred by the producer associated with planning, design, materials, installation, labor, management, maintenance, or training;

(b) Income forgone by the producer; and

(c) Expected environmental benefits as determined by the CMT.

#### Exclusions

SEC(e)(3)(B) payments to a producer will not be provided for conservation activities for which there is no cost incurred or income forgone to the producers.

##### *Comments*

One commenter recognized and applauded NRCS' effort to place the dollars in the hands of the operator. This policy avoids creating unnecessary angst within the farming communities.

##### *NRCS Response*

The CSP statutory authority requires that NRCS provide contract holders payments to compensate for installing and adopting additional conservation activities, and improving, maintaining, and managing conservation activities in place on the operation of the producer at the time the contract offer is accepted. NRCS has added clarity to the rule in paragraph 1470.6(a).

#### Interaction With Subsidy Payments

##### *Comments*

NRCS received two comments regarding CSP and subsidy payments. One commenter expressed that it is about time that we stop giving subsidies to specific farmers on the basis of specific crops. We can ALL benefit greatly if these subsidies were distributed instead on the basis of their environmental effectiveness; and two, in no way should these payments be added to the government's corn or grain subsidies obtained by those who rent the land.

##### *NRCS Response*

NRCS is following statutory authority by providing contract holders payments to compensate for installing and adopting additional conservation activities, and improving maintaining, and managing conservation activities in place at the operation of the producer at the time the contract offer is accepted. The CSP payment is based on environmental benefits accrued across the four major land uses authorized by the program and is not crop specific.

#### Annual Payments

##### *Comments*

Commenters expressed a number of concerns related to annual payments including that payment rates are too low and that low payment rates push landowners towards less beneficial enhancements. Additionally, the ability to receive cost-share assistance or use other conservation programs to improve conservation systems is a disincentive to participate in CSP, especially when combined with the low payment rate; producers cannot determine their exact cost and benefit of program participation if they are provided estimated annual payment rates; payment rates for cropland, pastureland, and managed grazing lands are too low; managed grazing land should be paid at the same rate as cropland; and NIPF deserves the highest annual payment rate. NRCS also heard that prompt payments are important to cover participant expenses incurred in the preceding months.

##### *NRCS Response*

The CSP statute provides a maximum acreage enrollment and funding level for each fiscal year. NRCS needed the payment discovery period, described in the "Discussion of Payment" section, because no historical information was available to be able to establish the rates for performance points and still be able to meet the program constraints. NRCS used real time data from the first sign-

up to establish the national payment rate per point by land use. It is NRCS' intention to maintain, to the extent practicable, the per point payment rates established for the first sign-up in future ranking periods. This decision allows NRCS to provide estimated payment amounts to applicants early in the application process.

To manage CSP funding and meet legislative requirements, NRCS used the 2009 application period to arrive at a uniform payment rate per land use conservation performance point. NRCS modeled the annual land use payment rates using the following nationwide sign-up data from the 2009 application period:

(a) New and existing environmental benefits measured in conservation performance points generated by land use type;

(b) Costs incurred and income foregone for conservation activities; and

(c) Available program funding levels. Note that land use payment rates represent the composite costs of existing and new activities per performance point, proportionally adjusted to manage program payments to achieve the national average rate of \$18 per acre.

CSP payments by statute are based on the costs associated with agriculture on different land uses. In general, the costs associated with the maintenance and enhancements on pastureland are lower than those associated with cropland; therefore, the payment rate for pastureland is lower.

The CSP statute establishes that the Secretary look at current practices and future commitments to conservation. Historical changes to agricultural operations were made for a multitude of personal, financial, and cultural reasons. Although it is difficult to fairly assess past actions, CSP payments are calculated based on existing levels of conservation stewardship as well as a commitment to add conservation. A grass based farm should score well for existing levels of stewardship, and the CSP payment should reflect this.

NRCS has established that grassland, that is managed for hay or haylage, is considered cropland. If the land is also grazed, a determination must be made about which is the predominant activity, haying or grazing. The predominant activity will determine the land use category. If it is split evenly between the two activities the applicant should decide which land use will be considered.

Although many commenters referenced payment rates in terms of payment per acre, under CSP, participants are paid for operational conservation performance—the higher

the performance, the higher their payment. It is inappropriate to refer to the national payment rates on a per acre basis as the payments are made for performance points, and they are unique for each operation. NRCS clarifies that the estimated payment rates were made available to applicants in the 2009 sign-up to provide a proxy of type of national average payment that the program could offer. Additional information related to payments can be located at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html).

Regarding concerns related to prompt payments, NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. NRCS amends 1470.24(d), timing of payments, to add, "For newly enrolled contracts, payments will be made as soon as practicable after October 1 following the fiscal year of enrollment."

### **Supplemental Payments—Resource-Conserving Crop Rotation**

#### *Comments*

NRCS received 5 comments on the topic of supplemental payments.

One commenter expressed the timely release of the rules for implementation of and application for resource-conserving crop rotation supplemental payments is very important, in particular for rice, which is an irrigated crop. The Farm Bill says that the term resource-conserving crop means, in part, a rotation that reduces soil-moisture depletion or otherwise reduces the need for irrigation. With irrigation being the essence of rice production, rice producers who apply for the rotation supplement should not be disadvantaged in any way because they must irrigate their rice crop. Prompt USDA determinations about what rotations are beneficial and the definition of resource-conserving crops, for purposes of this program component, would assist prospective applicants in making informed, timely decisions about applying.

Another commenter recommended no supplemental payment will be made until the crop rotation is installed.

#### *NRCS Response*

NRCS acknowledges the concerns and encourages producers to refer to the activity criteria listed on the resource-conserving crop rotation jobs sheet at [http://www.nrcs.usda.gov/programs/new\\_csp/csp.html](http://www.nrcs.usda.gov/programs/new_csp/csp.html). In addition, refer to the State Web site where eligible resource-conserving crops are posted. NRCS understands the importance of this under advisement for future ranking

periods. However, the procedures allow applicants to schedule the resource-conserving crop rotation when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third year of the contract and established or planted on all rotation acres by the fifth year of the contract.

#### *Comments*

One commenter requested NRCS provide more than one resource outcome, combined with the concept of supplemental payments. Consideration should be given to resource-conserving crops that provide nectar and pollen for native and managed pollinators. Alfalfa is a good example, so long as the practice includes allowing the plants to bloom and providing access to beekeepers.

#### *NRCS Response*

The benefits of a resource-conserving crop rotation include protection and habitat for pollinators. A resource-conserving crop rotation means a crop rotation that includes at least one resource-conserving crop, and reduces wind and water erosion, increases soil organic matter, improves soil fertility and tilth, interrupts pest cycles, reduces depletion of soil moisture or reduces the need for irrigation in applicable areas, and may provide protection and habitat for pollinators.

#### *Comments*

Finally, one commenter expressed that the payment for a resource-conserving crop rotation is inadequate to encourage change.

#### **Payment Limitations**

NRCS received 58 comments on the topic of payment limitations. Although commenters expressed both support for and dissatisfaction with payment limitations, more commenters supported the limitations than did not.

One commenter expressed that section 1470.24(g) imposes an arbitrary contract limit of \$200,000 per contract regardless of the number of producers involved in the farming operation covered by the contract. This limit is outside the clear language of the statute and will negatively impact commercial-size farming operations.

Thirty-two respondents stated that the CSP payment limits should be retained and enforced. Many of these respondents also expressed that NRCS should resist pleas to incorporate payment limitation loopholes. One of the respondents expressed that USDA needs to ensure that as many farmers as

possible can access the program for the greatest environmental benefit and farmers' bottom lines. Another respondent recommended an addition to the rule to make CSP contracts and payments subject to the FSA "actively engaged in farming" rules. One respondent identified that payment limits should remain a separate payment limitation and not be combined with other payments to encourage more moderate sized farms to participate and keep the total cost of the program at the limits of \$40,000 per person or legal entity during any fiscal year, and \$200,000 over any 5-year period.

Conversely, NRCS received many comments expressing that the only CSP payment limit the Farm Bill does declare explicitly is that \$200,000 is the amount that a person or legal entity may receive in the aggregate, but may not exceed for all CSP contracts entered into during any 5-year period. A limit on a CSP contract as proposed in the interim final rule paragraph 1470.24 (g), is neither legislated in the Farm Bill nor discussed in the Statement of Managers.

#### *NRCS Response*

NRCS follows the Commodity Credit Corporation (CCC) regulation in 7CFR part 1400 when applying its statutory payment limitation requirements for CSP. This regulation is applicable to most CCC and FSA commodity, price support, and conservation programs.

NRCS used 7 CFR part 1400 as a guide for establishing the CSP contract limitation. A joint operation is composed by members who are either persons or legal entities. Based on how joint operations are characterized in section 1400.106, the statutory payment limitation applies to each person or legal entity that comprises the joint operation. NRCS recognizes the \$200,000 contract limitation established in the interim final rule was too low and unfairly restricted certain joint operations who achieve the conservation performance levels needed to earn the payments. Therefore, NRCS raises, in the final rule, the CSP contract limitation to \$400,000, which would allow two members of a joint-tenancy operation to earn the payments to obtain their \$200,000 per person payment limitation authorized in statute. Further, NRCS establishes in paragraph (h) an annual contract limit for these joint operations of up to \$80,000. These payment limitations do not apply to funding arrangements with federally recognized Indian tribes or Alaska Native corporations.

### Comments

Twenty-one respondents expressed concern about the payment limits.

NRCS received comments suggesting where CSP accepted farming operations that exceed the \$40,000 payment limit, NRCS should only include the acres necessary to reach the \$40,000 payment limit against the State's allotted acres because the limit is understood and acceptable to producers. There is no advantage to NRCS offering a program that results in artificially low per acre contracts. If large farms only consumed their proportional share of the allotted CSP acres, large farms would present no threat to other operations. Large farms offer tremendous value to the United States taxpayer by providing more acres of conservation practices for the tax dollar. The current rule could result in large farms avoiding CSP.

### NRCS Response

No changes are made to the rule in response to the comments. NRCS acknowledges the concern and explored this recommendation during the payment discovery period. NRCS cannot limit the acres it considers attributable to the authorized enrollment level. By statute, NRCS is required to enroll in the program no more than 12,769,000 acres for each fiscal year.

### Comments

One respondent expressed that it is important to consider the longer-term implication of the agency's decision to create program provisions that run contrary to clear statutory language. If the agency can create its own set of payment limitations in each regulation it issues, the same overriding logic would allow it to impose its own set of environmental requirements, or allow it to change or override clear congressional guidelines with respect to expected environmental benefits.

One commenter recommended program participants should be able to roll over the annual payment limit for cause, so if they cannot undertake the conservation activity in a given year, but shift that work into the next year, the limit should be lifted if they request and extension on the activity.

### NRCS Response

NRCS will not make payments for individual activities, so an annual payment amount will not be changed to adjust for actual performance. An actual performance level below what is required in the contract is considered a potential contract violation. Potential contract violations are addressed with a formal contract review as per agency policy in the Conservation Programs

Manual, Part 512.55. In these cases, the annual payments will not be issued until NRCS and the applicant agree to a timeframe when the applicant will be back in compliance with the contract provisions. This agreement is official when form NRCS-CPA-153 has been signed by the participant and NRCS.

### Statutory Acreage/Payment Constraints

#### Comments

NRCS received four comments on the statutory acreage and payment constraints. One respondent stated that payment constraints should be addressed in part by enrolling considerably more grassland than is assumed by the economic analysis, but rather is more in keeping with 2009 applications by land-use type. Payment constraints should also be addressed by allowing for year-to-year flexibility in meeting the statutory average per-acre payment cap over the full 9-year period provided by statute.

#### NRCS Response

No changes are made to the rule in response to the comments. NRCS is not limiting the acres of grassland that enrolls in the program. The amount projected in the economic analysis was used in lieu of historical data for analytical purposes only. The analysis is being reviewed with actual sign-up data which will reflect the amount of pastureland that sign-up for the program. NRCS is offering fair payment rates to encourage participation by operators of all land uses.

#### Comments

One respondent stated that as the level of CSP payments per acre is relatively low (not to exceed an average of \$18 per acre), we anticipate that smaller acreage producers that might need to install a more costly enhancement on their own will be discouraged from applying for CSP because their expense to adopt some costlier enhancements (e.g. conversion of cropland to native grass for wildlife, alternative water sources, and exclusion fencing) may exceed their CSP payment. Thus, the commenter recommends that producers be allowed to utilize programs including EQIP and WHIP to help fund the installment of enhancements, as long as they do not duplicate payments on lands enrolled in CSP.

#### NRCS Response

No changes are made to the rule in response to the comments. NRCS recognizes the concerns related to small acreage producers. Participants have an extensive menu of enhancements to

choose from that vary significantly in cost and environmental benefits. Although NRCS will not allow producers to combine programs to help producers install enhancements as that will be considered a duplicate payment, CSP participants can participate and receive funds under EQIP providing they do not receive payment for the same practice on the same land under both programs.

#### Comments

One respondent stated that given that the 2008 Farm Bill set caps on average payment rate and total acres, NRCS will need the flexibility to make changes based on the real data that a sign-up would offer to keep within the congressionally-set parameters.

#### NRCS Response

NRCS acknowledges the recommendation and will take under advisement for future ranking periods. However, it is NRCS' intention to maintain the per point payment rates in future ranking periods close to the same that was used in the first sign-up. This should allow NRCS to tell applicants early in their application process what their estimated payment will be.

#### Comments

One respondent urged NRCS to attempt to keep the average cost per acre for CSP down to \$18 per acre "to the extent practicable" as required by the statute.

#### NRCS Response

NRCS followed rigorous processes during the payment discovery period to ensure payment rates were established based on sign-up data and not to exceed legislative requirements. NRCS is currently monitoring the contract obligation process, and program constraints are being met. However, the States have not completed the obligation process which may result in small variations of the expected results.

### Minimum Contract Payment

#### Comments

NRCS received 55 comments expressing support that the final rule incorporates a minimum payment. Of these 55 comments, 21 respondents identified that the minimum payment should be at least \$1,500. The respondents asserted that a minimum payment would encourage participation among small farms, especially among organic producers and producers in the New England States. The respondents expressed that small farms are important links in our ecological system. The respondents were

concerned that without this minimum, there may be no incentive for farmers operating at a scale smaller than 50–100 acres to take part in the program. However, one of the respondents, while supporting the \$1,500 minimum payment, urged that the CSP payment limits in the interim final rule be retained and enforced to prevent payment limitation loopholes. NRCS also received comments that producers in certain geographic locations, such as Hawaii, Guam, and Alaska would potentially not participate in the program if the contract payment was too low.

#### *NRCS Response*

Under the existing payment structure, payments consider the environmental benefits produced on each acre. NRCS recognizes that small scale operations, beginning farmers or ranchers, and limited resource farmers or ranchers could be discouraged from participating, as well as producers in certain geographic locations and those who have been historically underserved. NRCS intends to encourage conservation on all agriculture operations regardless of size or type of operation, including organic production systems. NRCS is seeking CSP regulatory provisions to more directly encourage participation of small-scale producers, socially disadvantaged farmers or ranchers, beginning farmers or ranchers, and limited resource farmers or ranchers. NRCS believes that participation by these agricultural producers will provide for more conservation assistance for those who traditionally have not participated in USDA programs, as well as beginning farmers or ranchers seeking assistance with their operations.

Therefore, NRCS modified the rule in 1470.24 to add a new paragraph (d) that provides authority for minimum contract payments to socially disadvantaged farmers or ranchers, beginning farmers or ranchers, and limited resource farmers or ranchers. Paragraph (d) now reads, “Minimum contract payment. NRCS will make a minimum contract payment to participants who are socially disadvantaged farmers or ranchers, beginning farmers or ranchers, or limited resource farmers or ranchers at a rate determined by the Chief in any fiscal year that a contract’s payment amount total is less than \$1,000.”

### **Section 1470.25 Contract Modifications and Transfers of Land**

#### *Comments*

NRCS received ten comments on the topic of contract modifications and transfers of land.

NRCS received several comments in support of the provisions in the interim final rule. One commenter supported the interim final rule regarding NRCS’ ability to modify, renew, and terminate contracts found in § 1470.25, § 1470.26, and § 1470.27. Another commenter supported the ability to transfer all or portions of the CSP contract if land is transferred or control of land changes. NRCS may wish to allow 90 days rather than 60 days to accomplish the transfer to ensure transfers are completed. However, another commenter expressed that the proposed rule provides for no contract modifications. Farm operations are dynamic organizations, and provisions should be allowed for the addition of qualifying land during the contract period. The other option would be to allow producers to enter into separate contracts for land added to the farm operation subsequent to an initial contract.

#### *NRCS Response*

NRCS chooses to retain the 60 days to accomplish the transfer to be consistent with other NRCS programs’ contract prohibitions. NRCS has determined that although participants cannot modify contracts to add lands after a contract has been approved due to complexities related to ranking and payment rates, participants may offer new applications for additional lands they acquire after the initial contract is approved. The application on the newly acquired land will have to compete against other lands being offered for the program at the same time.

#### *Comments*

One commenter expressed that section 1470.25(b) prohibits modifications that increase the contract obligation over the initial amount with the exception of contracts that are renewed after the 5-year period. This prohibition has no basis in statute, and it is unclear why NRCS would want to prohibit contract modifications that increase the initial obligation as long as the increase is within the overall person or entity cap of \$200,000.

#### *NRCS Response*

NRCS has amended the rule to allow participants who expand their farming operation to submit new applications for additional contracts on the newly acquired acreage. Any new application

will have to compete with other applications received during the same ranking period. This policy enables producers to participate in CSP on newly acquired land while maintaining the integrity of the ranking and payment process.

#### *Comments*

Two commenters strongly encouraged NRCS to not penalize producers for amending their contract to enroll sensitive lands in other Title II Conservation Programs such as CRP, GRP, or WRP. Another recommended clarifying that CSP contracts can be modified to allow producers to enroll land into other conservation programs and payments should be modified to reflect the producers’ costs and the environmental benefits gained on the entire field.

#### *NRCS Response*

NRCS agrees with the commenters and amended the final rule in paragraph 1470.25 to allow modifications to contracts to cancel and remove contract acres enrolled in programs like CRP, GRP, WRP, or other similar Federal or State programs without penalty to the participant.

#### *Comments*

One commenter recommended when renewable energy facilities and infrastructure are built on existing CSP contracts, the contract should be modified to address acres impacted by earthmoving and construction activities. These activities change the intent and purpose of the CSP contract.

#### *NRCS Response*

NRCS agrees with the commenter. NRCS will consider taking land out of production in a potential non-compliance situation. State Conservations will evaluate these cases individually and decide if contract termination is needed or if a modification of contract acres is permitted to allow the producer to maintain the contract with the reduced acres.

### **Section 1470.26 Contract Renewal**

#### *Comments*

NRCS received nine comments on the topic of contract renewal. One commenter supported the interim final rule regarding NRCS’ ability to modify, renew, and terminate contracts found in § 1470.25, § 1470.26, and § 1470.27.

#### *NRCS Response*

NRCS appreciated the positive feedback.

*Comments*

NRCS received a comment that it should be much clearer and more explicit in the final rule. As a condition of eligibility for renewal, the participant should be required to meet or exceed the stewardship threshold for at least two additional priority resource concerns during the second contract term, provided they are not already exceeding the threshold for all or at least four priority resource concerns. In addition, the requirement to adopt additional conservation activities should be tied directly to the requirement to meet or exceed the threshold on those additional priority resource concerns.

*NRCS Response*

NRCS intends to follow the Managers' Report language that provides, "The Secretary is provided authority to require new conservation activities as part of the contract renewal process. It is the intent of the Managers that this could include expanding the degree, scope, and comprehensiveness of conservation activities adopted by a producer to address the original priority resource concerns or addressing one or more additional priority resource concerns." To add clarity to the rule, NRCS amends paragraphs 1470.26(b)(3) and (4) to read as follows: "(3) At a minimum, meet stewardship thresholds for at least two priority resource concerns; and (4) agree to adopt additional conservation activities to address at least one additional priority resource concern during the term of the renewed conservation stewardship contract."

*Comments*

One respondent identified that section 1470.26 of the interim final rule provides that NRCS will permit contract renewals to foster participant commitment to increased conservation performance. The commenter believes that payment for implementing additional conservation activities should be equally weighted with payment for implementing existing conservation activities.

*NRCS Response*

NRCS established the National Payment Rates which include the conservation performance for existing and new activities. It anticipates it will maintain the same payment structure on renewed contracts.

*Comments*

One commenter supported the idea of contract renewals. Some practices take years of implementation before you

actually see financial results. When transitioning to no-till farming practices in semi-arid Montana, it takes between 7 and 10 years before the nutrient requirements stabilize and the producer is able to reduce the amount of fertilizer that is required. Assisting farmers and ranchers with additional time to implement larger practices can only serve to help the meet the goals of CSP and improve our environment.

*NRCS Response*

NRCS agrees with the commenter. Contract renewal will ensure that conservation benefits achieved in the first period will be maintained longer. In addition, this will allow participants to adopt new conservation activities and address additional stewardship thresholds. No change is made to the rule in response to the comment.

**Section 1470.27 Contract Violations and Termination***Comments*

Section 1470.27, "Contract violations and termination," addresses the procedures that NRCS will take when a violation has occurred or a contract termination is needed. NRCS received four comments on this section.

One commenter recommended NRCS remove the penalty for terminating the CSP contract before the 5 years is done. The environment will reap a benefit from even just one year of CSP enrollment and conservation practices. We should be trying to encourage participation rather than instilling fear of repercussions.

*NRCS Response*

NRCS will follow agency contracting policies to be consistent with other NRCS programs and ensure program objectives are met. However, NRCS will not penalize a participant if they failed to comply with contract provisions due to circumstances beyond their control.

*Comments*

One commenter requested NRCS include verbiage that specifically says the landowner will not be held liable in any manner if their tenant does not fulfill the 5-year contract. This would encourage landowners to cooperate with tenants who want to do good things for the environment.

*NRCS Response*

NRCS does not consider it appropriate to include the language recommended above as NRCS may not have any contractual obligations with the landlords. NRCS enters into a contract with the applicant who is held responsible for meeting the contract

provisions. NRCS has provisions that explain that participants will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant. In addition, NRCS will ensure that producers who would have an interest in acreage being offered received treatment which NRCS deems to be equitable.

**Subpart C—General Administration****Section 1470.30 Fair Treatment of Tenants and Sharecroppers***Comments*

Section 1470.30, "Fair treatment of tenants and sharecroppers," specifies that any CSP payments received must be divided in the manner specified in the contract. Where conflicts arise between an operator and landowner, NRCS may refuse to enter into a CSP contract. NRCS received two comments on this section.

One commenter expressed that tenant and sharecropper treatment must be a priority and communicated clearly and frequently to applicants and participants during every phase of the CSP process. In particular, USDA must clearly and frequently communicate to applicants and participants the interim final rule statement, i.e., that the Department may refuse to enter into a CSP contract when there is a disagreement amongst joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

*NRCS Response*

NRCS does not want to interfere with the contractual relationship between landowners and tenants. However, NRCS has a responsibility to ensure fair treatment of tenants. NRCS feels that this concern has been addressed in the program contract appendix which is given to the applicants at the time of application and reviewed, accepted, and signed before contract obligation. The contract appendix provides that:

No payment will be approved for the current year if the CCC determines that any of the following conditions exist: (1) The landlord or operator has not given the tenants that have an interest in the agricultural operation covered by the contract, or that have a lease that runs through the contract term at the time of sign-up, an opportunity to participate in the benefits of the program, and (2) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have

been made, all or any part of the payments, as determined by the CCC, must be refunded according to paragraph 5F of the contract, and no further payments will be made.

#### *Comments*

The second commenter recommended NRCS adopt additional procedures to be sure that the contracts themselves provide fair treatment to tenants, and that landowners be required to disclose any operators on the land who may be farming on the land covered under CSP who lack adequate written lease agreements.

#### *NRCS Response*

NRCS accepts applications from the operator of record in the FSA farm records management system. Exceptions may be made for other tenants, other producers, and owners in the FSA farm records management system that can demonstrate, to the satisfaction of NRCS, they are the operator and have effective control of the land at the time of enrollment in the program. This should ensure that the contracts provide for fair treatment of tenants.

#### **Section 1470.31 Appeals**

No comments were received.

#### **Section 1470.32 Compliance With Regulatory Measures**

No comments were received.

#### **Section 1470.33 Access to Operating Unit**

NRCS received three comments regarding access to operating unit. One commenter requested USDA inform and make clearly available notices in its national, State, and local offices during public outreach activities, and during prospective applicants' and active participants' meetings, that its authorized representatives have certain limited rights to enter a private agricultural operation solely for CSP-related purposes. The interim final rule statement that NRCS will make every effort to contact the participant prior to the exercise of this provision must be honored and fulfilled to the fullest extent. Every effort to make prior contact must be documented and logged, using permissible and appropriate means of communication. Two commenters recommended that the right to access be extended to any representative of USDA, as in other USDA regulations. This will allow conservation partners with TSP agreements to assist with applications and conservation planning on the applications land.

#### *NRCS Response*

NRCS supports the comment and has inserted "or its authorized representative" after "NRCS" where appropriate within this section of the rule.

#### **Section 1470.34 Equitable Relief**

No comments were received.

#### **Section 1470.35 Offsets and Assignments**

No comments were received.

#### **Section 1470.36 Misrepresentation and Scheme or Device**

No comments were received.

#### **Section 1470.37 Environmental Credits for Conservation Improvements**

Section 1470.37, "Environmental credits for conservation improvements," provides NRCS' policy on environmental credits. NRCS received five comments on this section.

Two commenters were encouraged to see the provisions included on environmental credits and support the policy that any environmental credits (for example carbon or water quality) created in conjunction with a CSP contract are solely the property of the contract holder. This is consistent with policy statements made by USDA in reference to EQIP and CRP.

#### *NRCS Response*

NRCS appreciates the positive feedback. It is correct that the policy on this issue with respect to CSP is consistent with many other USDA programs. Although such assistance may favor program participants at the expense of non-participants, this stance is based on the Department's desire to foster the creation of credits to spur the supply side of these markets.

#### *Comments*

One commenter expressed that although NRCS is asserting no interest in the credits that may be generated due to participation in CSP, it is possible that the rules of an ecosystem services market may preclude the purchase of credits that may have already been partially funded by the taxpayer. In almost all cases, it is highly likely that NRCS has only financed the creation of a portion of the credits that may be generated by an operation, and that a large percentage of the potential ecosystem service credit is being generated through ongoing labor and investment on the part of the farm operator. It would help ensure the ability of all USDA conservation program participants to sell ecosystem services credits in any ecosystem

services market if USDA would calculate what portion of the potential credit they have financed and what portion remains that could be sold into an ecosystem services market. This would create more stability and assurance for producers who wish to participate in these markets.

#### *NRCS Response*

USDA recognizes and respects the rights for markets to establish their own technical and trading requirements for market participants. The rationale for precluding environmental credits generated by taxpayer-assisted programs is that these markets only want to recognize "additional" credits produced without tax-payer assistance. These markets would contend that credits generated through such programs would have been produced regardless of the presence of an environmental market and in fact, could affect the decision of non-program participants to create and enter into environmental markets. Measuring the degree of distortion created by tax-payer assistance programs to extricate its portion of the credits due to their influence would add another level of complexity to these emerging markets.

#### *Comments*

One commenter supported the provision of the regulation regarding environmental credits for conservation improvements. It is important the conservation program participants be able to participate in future ecosystem services markets regardless of whether they have or have not participated in Federal conservation programs.

#### *NRCS Response*

USDA supports the creation of environmental markets and does not directly affect the decision of program participants to participate in them.

#### *Comments*

One commenter recommended NRCS provide additional weight to projects that acreage CSP program goals while concurrently facilitating emerging environmental credit markets (*i.e.* those projects that are well-tailored to resulting in the production of marketable climate and water quality credits). In addition to meeting program goals, these projects will meet the administration's goal for fostering economic stimulus through enhanced markets in ecosystem services.

#### *NRCS Response*

The CSP has the potential to address specific resource concerns by allowing the State Technical Committee to select

the priority resource concerns in their State. Also, although NRCS recognizes that there may be substantial indirect impacts on local economies and employment, NRCS' primary objective is to put conservation on the ground.

#### Other Regulatory Changes

NRCS made the following administrative changes to add clarity to the rule:

(1) Text related to funding reserves for Socially Disadvantaged Farmers or Ranchers and Beginning Farmers or Ranchers was removed from paragraph 1470.2(e) and relocated more appropriately under 1470.4, Allocation and Management;

(2) Paragraphs 1470.2(f)(1)(i) through (iii) were added to place responsibilities of the State Technical Committees and local working groups in one location within the rule.

(3) Paragraph 1470.4(e) was added to include a statutory requirement to identify that CSP may contribute to the Cooperative Conservation Partnership Initiative (CCPI). CCPI provides that, for the funds available for CCPI, 90 percent will be allocated for projects selected at the State level and 10 percent for projects offered through a national competitive process. For the percentage of funds allocated based on a national competitive process, this regulation identifies that funding allocation decisions will consider the extent to which the project addresses national and regional conservation priorities.

(4) Paragraph 1470.3 includes a new definition for limited resource farmer and rancher for consistency with other NRCS regulations.

(5) Outreach—in paragraph 1470.5(b), deleted redundant text and added paragraph 1470.5(d) clarifying that NRCS will conduct focused outreach in regions of national significance in order to maximize program participation.

(6) Paragraph 1470.6(b)(4) was amended to provide clarification to "other eligible lands" to include "other private agricultural land as determined by the Chief, on which resource concerns related to agricultural production could be addressed by enrolling the land in CSP."

(7) The text in paragraph 1470.20(e), Application, was deleted and relocated to "Administration" to keep reference to administrative functions in one location. A new paragraph (e) has been added regarding State and local priorities.

(8) Paragraph 1470.24(e) clarified the timing of payments for newly enrolled contracts. In paragraph (i) clarified payment limitation provisions for Indian tribes, Pueblos, and Indian

nations. In paragraph (j) clarified that payments will be directly attributed to entity members.

#### List of Subjects in 7 CFR Part 1470

Agricultural operation, Conservation activities, Conservation measurement tool, Natural resources, Priority resource concern, Stewardship threshold, Resource-conserving crop rotation, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife and forest management.

■ For the reasons stated above, the CCC adds part 1470 of Title 7 of the CFR to read as follows:

### PART 1470—CONSERVATION STEWARDSHIP PROGRAM

#### Subpart A—General Provisions

Sec.

- 1470.1 Applicability.
- 1470.2 Administration.
- 1470.3 Definitions.
- 1470.4 Allocation and management.
- 1470.5 Outreach activities.
- 1470.6 Eligibility requirements.
- 1470.7 Enhancements and conservation practices.
- 1470.8 Technical and other assistance.

#### Subpart B—Contracts and Payments

- 1470.20 Application for contracts and selecting offers from applicants.
- 1470.21 Contract requirements.
- 1470.22 Conservation stewardship plan.
- 1470.23 Conservation activity operation and maintenance.
- 1470.24 Payments.
- 1470.25 Contract modifications and transfers of land.
- 1470.26 Contract renewal.
- 1470.27 Contract violations and termination.

#### Subpart C—General Administration

- 1470.30 Fair treatment of tenants and sharecroppers.
- 1470.31 Appeals.
- 1470.32 Compliance with regulatory measures.
- 1470.33 Access to agricultural operation.
- 1470.34 Equitable relief.
- 1470.35 Offsets and assignments.
- 1470.36 Misrepresentation and scheme or device.
- 1470.37 Environmental credits for conservation improvements.

Authority: 16 U.S.C. 3838d–3838g.

#### Subpart A—General Provisions

##### § 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year (FY) 2009 and thereafter.

(b) The purpose of CSP is to encourage producers to address resource

concerns in a comprehensive manner by:

- (1) Undertaking additional conservation activities; and
- (2) Improving, maintaining, and managing existing conservation activities.

(c) CSP is applicable in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(d) NRCS provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related natural resources, and for any similar conservation purpose as determined by NRCS.

##### § 1470.2 Administration.

(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 CSP, NRCS will:

(1) Make the program available nationwide to eligible applicants on a continuous application basis with one or more ranking periods to determine enrollments. One of the ranking periods will occur in the first quarter of each fiscal year, to the extent practicable; and

(2) Develop conservation measurement tools (CMT) for the purpose of carrying out the program.

(d) During the period beginning on October 1, 2008, and ending on September 30, 2017, NRCS will, to the maximum extent practicable:

(1) Enroll in CSP an additional 12,769,000 acres for each fiscal year; and

(2) Manage CSP to achieve a national average rate of \$18 per acre, which includes the costs of all financial and technical assistance and any other expenses associated with program enrollment and participation.

(e) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program matters, including:

(i) Establishment of ranking pools appropriate for the conduct of CSP within the State to ensure program availability and prioritization of conservation activities. Ranking pools may be based on watersheds, geographic areas, or other appropriate regions within a State and may consider high-priority regional and State-level resource concern areas;

(ii) Identification of not less than three, nor more than five priority resource concerns in particular watersheds, geographic areas, or other appropriate regions within a State;

(iii) Identification of resource-conserving crops that will be part of resource-conserving crop rotations;

(iv) Development of design protocols and participation procedures for participation in on-farm research, and demonstration and pilot projects; and

(v) Evaluation of Cooperative Conservation Partnership Initiative (CCPI) projects and allowable program adjustments for the conduct of projects.

(2) Assign NRCS employees as designated conservationists to be responsible for CSP at the local level; and

(3) Be responsible for the program in their assigned State.

(f) NRCS may enter into agreements with Federal, State, and local agencies, conservation districts, Indian tribes, private entities, and individuals to assist NRCS with program implementation.

### § 1470.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Agricultural land* means cropland, rangeland, and pastureland on which agricultural products or livestock are produced and resource concerns may be addressed. Agricultural lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

*Agricultural operation* means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the applicant; and

(2) Which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

*Animal waste storage or treatment facility* means a structural conservation

practice used for storing or treating animal waste.

*Applicant* means a person, legal entity, joint operation, or Indian tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.

*Beginning farmer or rancher* means:

(1) An individual or legal entity who:

(i) Has not operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years (this requirement applies to all members of a legal entity); and

(ii) Will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

*Chief* means the Chief of NRCS, or designee.

*Conservation activities* means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities as determined by NRCS.

*Conservation district* means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land conservation committee," "natural resource district," or similar name.

*Conservation measurement tool* means procedures developed by NRCS to estimate the level of environmental benefit to be achieved by a producer

using the proxy of conservation performance.

*Conservation planning* means using the planning process outlined in the applicable National Planning Procedures Handbook (NPPH).

*Conservation practice* means a specified treatment, such as a structural or vegetative practice or management technique, commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the NRCS Field Office Technical Guide, section IV, which is based on the National Handbook of Conservation Practices.

*Conservation stewardship plan* means a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant's conservation objectives will be maintained with the plan.

*Conservation system* means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

*Contract* means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is an agreement for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

*Designated conservationist* means an NRCS employee whom the State Conservationist has designated as responsible for CSP at the local level.

*Effective control* means possession of the land by ownership, written lease, or other legal agreement and authority to act as decisionmaker for the day-to-day management of the operation both at the time the applicant enters into a stewardship contract and for the required period of the contract.

*Enhancement* means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those enhancements directly related to a practice standard are applied in a manner that exceeds the

minimum treatment requirements of the standard.

*Enrollment* means for the initial sign-up for FY 2009, NRCS will consider a participant "enrolled" in CSP based on the fiscal year the application is submitted, once NRCS approves the participant's contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

*Field office technical guide* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Indian lands* means all lands held in trust by the United States for individual Indians or Indian tribes, or all land titles held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or lands subject to the rights of use, occupancy, or benefit of certain Indian tribes. This term also includes lands for which the title is held in fee status by Indian tribes and the U.S. Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

*Indian Tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Joint operation* means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

*Legal entity* means, as defined in part 1400 of this chapter, an entity created under Federal or State law.

*Limited Resource Farmer or Rancher* means:

(1) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years (\$142,000 is the amount for 2010, adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce Data).

*Liquidated damages* means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Local working group* means the advisory body as described in 7 CFR part 610.

*Management measure* means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

*National Organic Program* means the program, administered by the Department of Agriculture (USDA) Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

*Natural Resources Conservation Service* means an agency of USDA which has responsibility for administering CSP using the funds, facilities, and authorities of the CCC.

*Nonindustrial private forest land* means rural land that has existing tree cover or is suitable for growing trees, and is owned by an individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

*Operation and maintenance* means work performed by the participant to maintain existing conservation activities to at least the level of conservation performance identified at the time the application is obligated into a contract, and maintain additional conservation activities installed and adopted over the contract period.

*Participant* means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

*Payment* means financial assistance provided to the participant under the terms of the CSP contract.

*Person* means, as defined in part 1400 of this chapter, an individual, natural person and does not include a legal entity.

*Priority resource concern* means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local working groups, as a priority for a State, or the specific geographic areas within a State.

*Producer* means a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation, as defined in part 1400 of this chapter, or who is engaged in agricultural production or forest management.

*Resource concern* means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.

*Resource-conserving crop* means a crop that is one of the following:

- (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.

*Resource-conserving crop rotation* means a crop rotation that:

- (1) Includes at least one resource-conserving crop as determined by the State Conservationist;
- (2) Reduces erosion;
- (3) Improves soil fertility and tilth;
- (4) Interrupts pest cycles; and
- (5) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

*Secretary* means the Secretary of USDA.

*Socially disadvantaged farmer or rancher* means a producer who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group, without regard to their individual qualities. These groups consist of American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics. A socially disadvantaged applicant is an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals.

*State Conservationist* means the NRCS employee authorized to implement CSP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Stewardship threshold* means the level of natural resource conservation and environmental management required, as determined by NRCS using the CMT, to conserve and improve the quality and condition of a natural resource.

*Technical assistance* means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, forest producers, and other eligible entities, such as conservation planning, technical consultation, preparation of forest stewardship management plans, and assistance with the design and implementation of conservation activities; and

(2) Technical infrastructure, including processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Technical Service Provider* means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of, or on behalf of, NRCS as referenced in 7 CFR part 652.

#### **§ 1470.4 Allocation and management.**

(a) The Chief will allocate acres and associated funds to State Conservationists:

(1) Primarily on each State's proportion of eligible land to the total amount of eligible land in all States; and

(2) On consideration of:

(i) The extent and magnitude of the conservation needs associated with agricultural production in each State based on natural resource factors that consider national, regional, and State-level priority ecosystem areas,

(ii) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs, and

(iii) Other considerations determined by the Chief to achieve equitable geographic distribution of program participation.

(b) The State Conservationist will allocate acres to ranking pools, to the extent practicable, based on the same factors the Chief considers in making allocations to States.

(c) Of the acres made available for each of fiscal years 2009 through 2012 to carry out CSP, NRCS will use, as a minimum:

(1) Five percent to assist beginning farmers or ranchers, and

(2) Five percent to assist socially disadvantaged farmers or ranchers.

(d) In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the reallocation process, NRCS will consider several factors, including demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

(e) Of the CSP funds and acres made available for each fiscal year:

(1) The Chief will reserve 6 percent of funds and acres to ensure an adequate source of funds and acres for the CCPI. Of the funds and acres reserved, the Chief will allocate:

(i) Ninety percent to projects based on the direction of State Conservationists, with the advice of State Technical Committees; and

(ii) Ten percent to projects based on a national competitive process established by the Chief. In determining funding allocation decisions for these projects, NRCS will consider the extent to which they address national and regional conservation priorities.

(2) Any funds and acres reserved for the CCPI in a fiscal year that are not obligated by April 1 of that fiscal year may be used to carry out other CSP activities during the remainder of that fiscal year.

#### **§ 1470.5 Outreach activities.**

(a) 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.

(b) Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, beginning farmers or ranchers, limited resource farmers or ranchers, and socially disadvantaged farmers or ranchers.

(c) NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.

(d) NRCS will conduct focused outreach in regions of national significance in order to maximize program participation. These areas could include landscapes such as the Chesapeake Bay watershed and Great Lakes basin.

#### **§ 1470.6 Eligibility requirements.**

(a) *Eligible applicant.* To be an eligible applicant for CSP, a producer

must be the operator in the Farm Service Agency (FSA) farm records management system. Potential applicants that are not in the FSA farm records management system must establish records with FSA. Potential applicants whose records are not current in the FSA farm records management system must update those records prior to the close of the evaluation period to be considered eligible. NRCS may grant exceptions to the "operator of record" requirement for producers, tenants, and owners in the FSA farm records management system that can demonstrate, to the satisfaction of NRCS, they will operate and have effective control of the land. Applicants must also meet all of the following requirements:

(1) Have effective control of the land unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(2) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(3) Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors; conservation activity 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; and

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(b) *Eligible land.* A contract application must include all of the eligible land on an applicant's agricultural operation, except as identified in paragraph (b)(3) of this section. A participant may submit an application(s) to enter into an additional contract(s) for newly acquired eligible land, which would then compete with other applications in a subsequent ranking period. The land as described below is part of the agricultural operation and eligible for enrollment in the CSP:

- (1) Private agricultural land;
- (2) Agricultural Indian lands;

## (3) NIPF:

(i) By special rule in the statute, NIPF is eligible land,

(ii) No more than 10 percent of the acres enrolled nationally in any fiscal year may be NIPF,

(iii) The applicant will designate by submitting a separate application if they want to offer NIPF for funding consideration,

(iv) If designated for funding consideration, then the NIPF component of the operation will include all the applicant's NIPF. If not designated for funding consideration, then the applicant's NIPF will not be part of the agricultural operation; and

(4) Other private agricultural land, as determined by the Chief, on which resource concerns related to agricultural production could be addressed by enrolling the land in CSP.

(c) *Ineligible land.* The following ineligible lands are part of the agricultural operation, but ineligible for inclusion in the contract or for payment in CSP:

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

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

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

(4) Land enrolled in the Conservation Security Program, 7 CFR part 1469;

(5) Public land including land owned by a Federal, State, or local unit of government; and

(6) 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:

(i) Had previously been enrolled in CRP,

(ii) Has been maintained using long-term crop rotation practices as determined by the designated conservationist, or

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

#### § 1470.7 Enhancements and conservation practices.

(a) Participant decisions describing the additional enhancements and conservation practices to be implemented under the conservation stewardship contract will be recorded in the conservation stewardship plan.

(b) NRCS will make available to the public the list of enhancements and conservation practices available to be

installed, adopted, maintained, and managed through the CSP.

(c) NRCS will make available bundled suites of conservation activities for participants to voluntarily select to include as part of their conservation stewardship plans. The bundles will be designed to coordinate the installation and adoption of enhancements with each other to address resource concerns in a more comprehensive and cost-effective manner.

(d) CSP encourages the use of other NRCS programs to install conservation practices that are required to meet agreed-upon stewardship thresholds, but the practices may not be compensated through CSP.

#### § 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a technical service provider (TSP) as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is 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. In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

(e) NRCS may utilize the services of State foresters and existing technical assistance programs such as the Forest Stewardship Program of the U.S. Forest Service, in coordinating assistance to NIPF owners.

#### Subpart B—Contracts and Payments

##### § 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Applicants may submit an application to enroll all of their eligible land into CSP on a continuous basis.

(b) *Stewardship threshold requirement.* To be eligible to

participate in CSP, an applicant must submit to the designated conservationist for approval, a contract application that:

(1) Indicates the applicant's conservation activities, at the time of application, are meeting the stewardship threshold for at least one resource concern;

(2) Would, at a minimum, meet or exceed the stewardship threshold for at least one priority resource concern in addition to the resource concern described in paragraph (b)(1) of this section by the end of the conservation stewardship contract by:

(i) Installing and adopting additional conservation activities, and

(ii) Improving, maintaining, and managing conservation activities present on the agricultural operation at the time the contract application is accepted by NRCS;

(3) Provides a map, aerial photograph, or overlay that:

(i) Identifies the applicant's agricultural operation and NIPF component of the operation, and

(ii) Delineates eligible land with associated acreage amounts; and

(4) If the applicant is applying for on-farm research and demonstration activities or for pilot testing, describes the nature of the research, demonstration, or pilot testing in a manner consistent with design protocols and application procedures established by NRCS.

(c) *Evaluation of contract applications.* NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the first quarter of the fiscal year;

(2) In evaluating CSP applications, the State Conservationist or designated conservationist will rank applications based on the following factors, using the CMT, to the maximum extent practicable:

(i) Level of conservation treatment on all applicable priority resource concerns at the time of application,

(ii) Degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance,

(iii) Number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract, and

(iv) Extent to which other resource concerns, in addition to priority resource concerns, will be addressed to meet or exceed the stewardship threshold by the end of the contract period;

(3) In the event that application ranking scores from (2) above are

similar, the application that represents the least cost to the program will be given higher priority; and

(4) The State Conservationist or designated conservationist may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(d) *Weighting of ranking factors.* To the extent the CSP objective of additional conservation is not being achieved, as determined by the Chief, NRCS will adjust the weighting of ranking factors in order to place emphasis on increasing net conservation benefits.

(e) *State and local priorities.* The Chief may develop and use additional criteria for evaluating applications that are determined necessary to ensure that national, State, and local conservation priorities are effectively addressed.

(f) *Ranking pools.* Ranking pools will be established in accordance with § 1470.2(e)(1)(i).

(1) NIPF will compete in ranking pools separate from agricultural land. An applicant with both NIPF and agricultural land will have the options to submit:

- (i) One application for NIPF;
- (ii) One application for agricultural land; or
- (iii) Two applications, one for each land type.

(2) An applicant with an agricultural operation or NIPF component of the operation that crosses ranking pool boundaries will make application and be ranked in the ranking pool where the largest acreage portion of their operation occurs.

(3) Within each State or established ranking pool, the State Conservationist will address conservation access for certain farmers or ranchers, including:

- (i) Socially disadvantaged farmers or ranchers; and
- (ii) Beginning farmers or ranchers.

(g) *Application pre-approval.* The State Conservationist or designated conservationist will make application pre-approval determinations during established ranking periods based on eligibility and ranking score.

(h) *Field verification.* NRCS will conduct onsite field verification prior to obligation of contract funding to substantiate the accuracy of the information provided by pre-approved applicants during the application process.

#### § 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be

developed in accordance with § 1470.22, the State Conservationist or designee will enter into a conservation stewardship contract with the participant to enroll all of the eligible land on a participant's agricultural operation.

(b) The conservation stewardship contract will:

(1) Provide for payments over a period of 5 years;

(2) Incorporate by reference the conservation stewardship plan;

(3) State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;

(4) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Implement the conservation stewardship plan approved by NRCS during the term of the contract,

(ii) Operate and maintain conservation activities on the agricultural operation consistent with § 1470.23,

(iii) Comply with the terms of the contract or documents incorporated by reference into the contract,

(iv) Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with § 1470.27,

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with § 1470.25,

(vi) Maintain and make available to NRCS upon request, appropriate records documenting applied conservation activity and production system information, and provide evidence of the effective and timely implementation of the conservation stewardship plan and contract, and

(vii) Not engage in any action during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;

(5) Permit all economic uses of the land that:

(i) Maintain the agricultural or forestry nature of the land, and

(ii) Are consistent with the conservation purposes of the contract;

(6) Include a provision to ensure that a participant will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the

participant, including a disaster or related condition, as determined by the State Conservationist; and

(7) Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

#### § 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the NPPH to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Associated supporting information maintained with the participant's plan will include:

(1) CMT documentation that will be the basis for:

(i) Identifying and inventorying resource concerns,

(ii) Establishing benchmark data on the condition of existing conservation activities, and

(iii) Documenting the participant's conservation objectives to reach and exceed stewardship thresholds;

(2) A plan map delineating enrolled land with associated acreage amounts;

(3) In the case where a participant wishes to initiate or retain organic certification, documentation that will support the participant's transition to or participation in the National Organic Program;

(4) In the case where a participant is approved for the on-farm research and demonstration or pilot testing option, a research, demonstration, or pilot testing plan consistent with design protocols and application procedures established by NRCS; and

(5) Other information as determined appropriate by NRCS.

#### § 1470.23 Conservation activity operation and maintenance.

The participant will maintain and manage existing conservation activities on the agricultural operation to at least the level of conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period, and additional activities installed and adopted over the term of the conservation stewardship contract.

#### § 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide, as appropriate, annual

payments under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities. A split-rate annual payment structure will be used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation.

(1) To receive annual payments, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one additional enhancement must be scheduled, installed, and adopted in the first fiscal year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third fiscal year of the contract, and

(ii) As a minimum, maintain existing activities to the level of existing conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period;

(2) To earn annual payments for an eligible land use, a participant must schedule, install, and adopt at least one additional conservation activity on that land-use type. Eligible land-use types that fail to have at least one additional conservation activity scheduled, installed, and adopted will not receive annual payments;

(3) A participant's annual payments will be determined using the conservation performance estimated by the CMT and computed by land-use type for eligible land earning payments. Conservation performance is prorated over the contract term so as to accommodate, to the extent practicable, participants earning equal annual payments in each fiscal year;

(4) The annual payment rates will be based to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training,

(ii) Income foregone by the participant, and

(iii) Expected environmental benefits, determined by estimating conservation performance improvement using the CMT;

(5) The annual payment method will accommodate some participant operational adjustments without the need for contract modification.

(i) Enhancements may be replaced with similar enhancements without adjustment of annual payment as long as the conservation performance is determined by NRCS to be equal to or

better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will not be allowed, and

(ii) Adjustments to existing activities may occur consistent with conservation performance requirements from § 1470.23; and

(6) Enhancements may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt a resource-conserving crop rotation.

(1) The State Conservationist will determine whether a resource-conserving crop rotation is eligible for supplemental payments based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits;

(2) A participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third fiscal year of the contract and planted on all rotation acres by the fifth fiscal year of the contract; and

(3) The supplemental payment is set at a rate needed to encourage a producer to adopt a resource-conserving crop rotation and will be based, to the maximum extent practicable, on costs incurred and income foregone by the participant and expected environmental benefits, determined by estimating conservation performance improvement using the CMT.

(c) *On-farm research and demonstration or pilot testing.* A participant may be compensated through their annual payment for:

(1) On-farm research and demonstration activities; or

(2) Pilot testing of new technologies or innovative conservation activities.

(d) *Minimum contract payment.* NRCS will make a minimum contract payment to participants who are socially disadvantaged farmers or ranchers, beginning farmers or ranchers, or limited resource farmers or ranchers, at a rate determined by the Chief in any fiscal year that a contract's payment amount total is less than \$1,000.

Definitions of socially disadvantaged

farmers or ranchers, beginning farmers or ranchers, and limited resource farmers or ranchers are contained in § 1470.3.

(e) *Timing of payments.* NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. For newly enrolled contracts, payments will be made as soon as practicable after October 1 following the fiscal year of enrollment.

(f) *Non-compensatory matters.* A CSP payment to a participant will not be provided for:

(1) New conservation practices or enhancements applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities, or associated waste transport or transfer devices for animal feeding operations; or

(3) Conservation activities for which there is no cost incurred or income foregone by the participant.

(g) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$40,000 during any fiscal year for all CSP contracts entered into, and \$200,000 for all CSP contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(h) *Contract limits.* Payments under a conservation stewardship contract with joint operations will be limited to \$80,000 per fiscal year and \$400,000 over the term of the initial contract period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations. The payment limits for contracts with persons or legal entities are contained in § 1470.24(g).

(i) *Payment limitation provisions for individual Indians and Indian tribes.* Payment limitations apply to individual tribal member(s) when applying and subsequently being granted a contract as an individual(s). Contracts with Indian tribes or Alaska Native corporations are not subject to payment or contract limitations. Indian tribes and BIA will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of contract obligation will cover the entire contract period. The tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or

other unique identification number, during the previous year for calculation of overall payment limitations.

(j) *Tax Identification Number.* To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage of interest in the joint operation or legal entity. Payments will be directly attributed to legal entity members for the purpose of complying with § 1470.24(g).

(k) *Unique tax identification numbers.* Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other CSP contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of § 1470.36.

(l) *Payment data.* NRCS will maintain detailed and segmented data on CSP contracts and payments to allow for quantification of the amount of payments made for:

- (1) Installing and adopting additional activities;
- (2) Improving, maintaining, and managing existing activities;
- (3) Participation in research and demonstration or pilot projects; and
- (4) Development and periodic assessment and evaluation of conservation stewardship plans developed under this rule.

**§ 1470.25 Contract modifications and transfers of land.**

(a) NRCS may allow a participant to modify a conservation stewardship contract if NRCS determines that the modification is consistent with achieving the purposes of the program.

(b) NRCS will allow modification to a conservation stewardship contract to remove contract acres enrolled in the CRP, WRP, or GRP or other Federal or State programs that offer greater natural resource protection. Such modifications are consistent with the purposes of CSP. Participants will not be subject to liquidated damages or refund of payments received for enrolling land in these programs.

(c) NRCS will not allow a participant to modify a conservation stewardship contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved by NRCS for renewal or other exceptional cases as determined by the Chief.

(d) Land under contract will be considered transferred if the participant loses control of the acreage for any reason.

(1) The participant is responsible to notify NRCS prior to any voluntary or involuntary transfer of land under contract;

(2) If all or part of the land under contract is transferred, the contract terminates with respect to the transferred land unless:

(i) The transferee of the land provides written notice within 60 days to NRCS that all duties and rights under the contract have been transferred to, and assumed by, the transferee, and

(ii) The transferee meets the eligibility requirements of the program; and

(e) Contract payment adjustments due to modifications will be reflected in the fiscal year following the modification.

**§ 1470.26 Contract renewal.**

(a) At the end of an initial conservation stewardship contract, NRCS may allow a participant to renew the contract to receive payments for one additional 5-year period, subject to the availability of funds, if they meet criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must:

(1) Be in compliance with the terms of their initial contract as determined by NRCS;

(2) Add any newly acquired eligible land that is part of the agricultural operation and meets minimum treatment criteria as established and determined by NRCS;

(3) At a minimum, meet stewardship thresholds for at least two priority resource concerns; and

(4) Agree to adopt additional conservation activities to address at least one additional priority resource concern during the term of the renewed conservation stewardship contract.

**§ 1470.27 Contract violations and termination.**

(a) The State Conservationist may terminate, or by mutual consent with the participants, terminate a contract where:

(1) The participants are unable to comply with the terms of the contract as the result of conditions beyond their control; or

(2) As determined by the State Conservationist, it is in the public interest.

(b) If a contract is terminated in accordance with the provisions of paragraph (a) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the contract terms or documents incorporated therein, NRCS will give the participant a period of time, as determined by NRCS, to correct the violation and comply with the contract terms and attachments thereto. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1470.36; or

(3) Engaged in actions that are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating CSP contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation activity has achieved the expected conservation performance improvement, is not adversely affected by the violation or the absence of other conservation activities that would have been installed under the contract, and has met the associated operation and maintenance requirement of the activity; and

(2) NRCS will have the option to reduce or waive the liquidated damages,

depending upon the circumstances of the case—

(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program, and

(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

### Subpart C—General Administration

#### § 1470.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

#### § 1470.31 Appeals.

A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation activities are not subject to appeal.

#### § 1470.32 Compliance with regulatory measures.

Participants will be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

#### § 1470.33 Access to agricultural operation.

NRCS, or its authorized representative, will have the right to enter an agricultural operation for the

purpose of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access will include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS, or its authorized representative, will make an effort to contact the participant prior to the exercise of this provision.

#### § 1470.34 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. The financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

(b) If a participant has been found in violation of a provision of the conservation stewardship contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

#### § 1470.35 Offsets and assignments.

(a) Any payment or portion thereof due to any participant under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.

(b) Any participant entitled to any payment may assign such payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

#### § 1470.36 Misrepresentation and scheme or device.

(a) If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be determined ineligible immediately.

(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must

refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(c) A participant will refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such participant with respect to all CSP contracts if they are determined to have:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(d) Participants determined to have committed actions identified in paragraph (c) of this section will:

(1) Have their interest in all CSP contracts terminated; and

(2) In accordance with § 1470.27(e), may be determined by NRCS to be ineligible for future NRCS-administered conservation program funding.

#### § 1470.37 Environmental credits for conservation improvements.

NRCS believes that environmental benefits will be achieved by implementing conservation activities funded through CSP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. Any requirements related to these environmental credits must be compatible with the purposes of the contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for CSP-funded improvements are met, consistent with § 1470.21 and § 1470.23. Where actions may impact the land and conservation activities under a CSP contract, NRCS will at the request of the participant, assist with the development of an O&M compatibility assessment prior to the participant entering into any credit agreement.

Signed this 21st day of May in Washington, DC.

**Dave White,**

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

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