

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****7 CFR Part 1469**

RIN 0578-AA36

**Conservation Security Program**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) is issuing a proposed rule with a request for comments. This proposed rule implements the Conservation Security Program (CSP) set out in the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002. This proposed rule describes how NRCS will implement the CSP to provide financial and technical assistance to agricultural producers who conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. This proposed rule also addresses public comments that NRCS solicited in an advanced notice of proposed rulemaking (ANPR) published February 18, 2003, in the **Federal Register** and other comments NRCS received in public workshops and focus groups. In addition, Congress is currently considering legislation that amends the CSP statute. Pending the enactment of the legislation, NRCS intends to publish a supplement to this proposed rule. The supplement will amend the proposed rule to provide further guidance as to how the agency will implement CSP and to address potential changes in law.

**DATES:** Comments must be received by March 2, 2004.

**ADDRESSES:** Send comments by mail to Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to [david.mckay@usda.gov](mailto:david.mckay@usda.gov); Attn: Conservation Security Program. You may access this proposed rule via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov>. Select "Farm Bill."

**FOR FURTHER INFORMATION CONTACT:** David McKay, Conservation Planning Team Leader, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-1845; fax: (202) 720-4265. Submit e-mail to: [david.mckay@usda.gov](mailto:david.mckay@usda.gov), Attention: Conservation Security Program.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

The program was authorized with an unspecified annual funding level from FY2003 through FY2007, with an overall spending cap of \$3.77 billion as of the date of this publication.

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) conducted a benefit cost analysis of this program, which is included in the Regulatory Impact Analysis of this rule. A summary of the analysis follows.

NRCS developed a simulation model to analyze CSP benefits and costs. The model assesses producer participation and the overall benefits and costs to society associated with that participation. The model is based on a series of composite farms, replicating the process of calculating the CSP participation decision. Given farm-level estimates of participation, enrolled acreage, payments, and costs, the model estimates on-site and environmental (off-site) benefits, net economic costs, government costs, government-to-producer transfer payments, net benefit to society, and the benefit-cost ratio.

The model calculates the overall CSP payment by calculating several payment components individually, and then by summing the results of: the base payment, cost-sharing for installation of new structural practices and adoption of new land management practices, cost-sharing for maintenance of existing structural and land management practices, and enhancement payments. The Net Present Value (NPV) of each payment is determined by a payment rate per acre, the number acres to which the payment applies, contract years in which the payment is made (*i.e.*, whether the payment is made on a one-time or annual basis), discounted to the present using a 7% annual discount rate. Payments for structural and land management practices were calculated using a methodology similar to that used for the Environmental Quality Incentives Program (EQIP) Benefit/Cost Analysis, Final Report, May 29, 2003.

In the absence of the CSP program, adoption of conservation practices would reflect existing incentives such as those provided by other USDA programs. For purposes of this analysis the baseline is assumed to be zero, or no additional adoption of conservation practices without the program.

The benefit analysis is limited to certain resource concerns for which we have reliable estimates of the benefits that accrue with the application of

conservation practices. For purposes of the CSP benefit cost analysis, benefits arise from the installation and adoption of practices required as a condition for enrollment in the program, or from the maintenance of practices beyond what would typically occur without maintenance payments. The difference between what would be the presumed practice effectiveness without maintenance payments and the enhanced effectiveness that would be expected with CSP maintenance payments represents the benefit of the program. This analysis does not include benefits that will accrue after the CSP contract ends. Although benefits may continue to be generated if the conservation practices remain in place after the end of the contract, the program could not claim those benefits because the participant is under no obligation to maintain the practices beyond the duration of the contract. Benefits as the result of CSP participation are expressed as either on-site (those that accrue to the participant) or environmental (those that accrue to society).

Two cost figures are germane. First, government expenditure includes all government expenditures relating directly to a specific CSP contract. These include financial assistance to the participant including base payments, existing and new practice payments, and enhancement payments; and technical assistance costs.

The second cost item of interest is the total economic cost to the economy. Total economic cost include total practice implementation costs (cost-share and participant cost), total practice maintenance costs, and technical assistance costs.

Program net benefits are the sum of all CSP-related benefits received by society less all CSP-related costs incurred by society. CSP-related benefits include on-site and environmental benefits that accrue from practice installation, adoption, and maintenance.

The net benefit of the CSP to society is CSP-related benefits less CSP-related costs. Note that payments to participants cancel, as they are a benefit to participants but a cost to society. Thus, transfer payments received by participants, payment above CSP-related conservation costs, also cancel out of the net benefit calculation. However, these transfer payments can produce unintended and potentially adverse consequences.

When payments closely approximate the costs of program participation, transfer payments are minimized. The use of regional, rather than national average rental rates to calculate the base

payment helps keep these payments from becoming large relative to land rental rates in areas where local rental rates are low relative to national average rates and reduces the likelihood that payments will, in fact, exceed cost.

General issues for analysis were identified, and a range of methods for limiting the CSP to stay within budgetary constraints or ramp-up options were analyzed. Questions raised in the Advanced Notice of Proposed Rulemaking (ANPR) serve as the basis for identifying important decision points for analysis. The identified alternatives include:

(1) The full CSP program as defined in Title II of the 2002 Farm Bill, with the maximum allowable cost share under the statute of 75%.

(2) The full CSP program as defined in Title II of the 2002 Farm Bill, with minimal cost share of 5%. Three sub-alternatives were then analyzed, where the model restricted participation by each tier level respectively.

(3) The CSP program limited by resource concern with minimal cost share. The resource concerns that would be required to be addressed in each contract would include soil, water, and wildlife. Two sub-alternatives were then analyzed. In the first sub-alternative, the base payment was calculated as 50% of the regional rental rate. In the second sub-alternative, the base payment was further reduced to 10% of the regional rental rate, and the enhancement payment calculation was modified to provide potentially larger enhancement payments.

(4) The CSP program limited by geography with minimal cost share. This alternative essentially implemented CSP as a pilot program, limited to six counties, one from each of the NRCS administrative regions.

CSP participation will require that producers address the treatment of identified resource concerns to a level that meets or exceeds the appropriate non-degradation standard according to the NRCS technical guide. A sensitivity analysis was utilized to identify a reasonable range of the additional costs that would be incurred for a given increase in benefits that may be obtained by improving the condition of the resource beyond the minimally acceptable level.

The results indicate that staying within the budget, while also offering CSP as an entitlement as mandated by the 2002 farm bill, will be difficult at best. Some combination of limitations or constraints is likely to be needed. The analyzed alternatives provide insight into what type of limitations could be used, and how they would affect

government payments, producer participation, and program net benefits. While only one of the scenarios actually achieves government expenditures below the budget limit, the model does show that limiting program payments, and program options can reduce participation and program expenditures.

Although the analysis provides estimates of the social net benefits of each alternative examined, its primary value is to illustrate the relative order of the identified alternatives, rather than provide accurate estimates of the costs and benefits. NRCS based its estimates on a number of assumptions because of substantial data gaps. There is, for example, no available information on the benefits associated with major program elements, such as enhancement activities above and beyond the non-degradation level. Instead, the RIA used estimates generated from experience with EQIP, CRP, and other USDA conservation programs. NRCS also assumes that producers would enroll in CSP if the program provided any positive net benefit to them (*i.e.*, even as small as \$1). This assumption does not take into consideration producers' cash flow constraints, which along with other factors could affect participation. Since the analysis does not have information on the behavioral response of producers to the incentives provided by CSP, the benefits analysis provided in the RIA is largely a hypothetical construct and does not reflect the benefits of the proposed program and the identified alternatives. NRCS intends to refine the analysis for the final rule. NRCS welcomes comments and additional data that may assist in this refinement.

A copy of the analysis is available upon request from Thomas Christensen, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, Room 5241-S, Washington, DC 20250-2890, or electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under "Additional Information".

The administrative record is available for public inspection in Room 5212 South Building, USDA, 14th and Independence Avenue SW., Washington, DC.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the draft EA, NRCS proposes issuing a Finding Of No Significant Impact (FONSI) before a final rule is published. Copies of the draft EA and draft FONSI may be obtained from Thomas Christensen, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, Room 5241-S, Washington, DC 20250-2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under "Program Information." Mail comments on the draft EA and draft FONSI by March 2, 2004, to Thomas Christensen, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250-2890, or submit them via the Internet to [farmbillrules@usda.gov](mailto:farmbillrules@usda.gov).

#### Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this proposed 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 is proposing to develop an online application and information system for public use.

#### Executive Order 12988

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

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354), USDA classified this proposed rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from David McKay, Conservation Planning Team Leader, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under "Program Information".

**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.

**Discussion of the Conservation Security Program****Overview**

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, May 13, 2002) (the Act) amended the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) to authorize the Conservation Security Program (CSP). The program is administered by USDA's Natural Resources Conservation Service (NRCS). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land and other non-cropped areas that are an incidental part of the agriculture operation.

Following the principles in USDA's Food and Agriculture Policy—Taking Stock for the New Century, and recognizing CSP's unique opportunities in the context of USDA's conservation

programs, the Secretary's vision for CSP is:

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

In short, CSP should reward the best and motivate the rest.

Another USDA report—21st Century Agriculture: A Critical Role for Science and Technology—highlights a broad range of conventional and emerging technologies that take advantage of new developments in soil, water, nutrient, and pest management. The report accentuates the challenges and opportunities of several key issues, including technology transfer, technology development, and sustainable agriculture systems. These conservation technologies provide a basis for implementation of the CSP enhancement payments through the application of intensive management measures and resource enhancement activities. These management activities can create powerful opportunities for producers to achieve even greater environmental performance and additional benefits for society. CSP will assure that both high-end and affordable conservation technologies are identified and utilized as intensive management activities to assure eligibility of a wide range of operations. CSP and other supportive conservation policies can help meet the Nation's goals for conservation, land productivity, enhanced food security, and stronger economic growth through the promotion of sound conservation principles and advancements in science and technology. In CSP, the enhancement provisions of the program should be specifically designed to showcase highly effective conservation activities and demonstrate how more intensive management activities can improve the resources and provide for more efficient resource utilization and energy conservation.

Scientific and technological advances hold great promise, but their full benefits will not be fully realized without practical application and adoption of the new technology on working agricultural lands through programs like the CSP. A copy of the USDA report is available electronically at <http://www.fas.usda.gov/ics/stconf/pubs/scitech2003/index.htm> and is dated June 2003.

USDA intends that CSP will recognize those farmers and ranchers, the land stewards, who meet the highest standards of conservation and environmental management. By managing all of the natural resources on their farms and ranches in a sustainable fashion to these high standards, stewards of the land benefit themselves, their communities and society as a whole. CSP can be an important tool for those stewards and others who strive towards the highest standards of conservation and environmental management. CSP helps sustain the economic well-being of those farmers and ranchers who reach this pinnacle of good land stewardship, and enhance the ongoing production of clean water and clean air on their farms and ranches—which are valuable commodities to all Americans.

The fundamental philosophy and intent of CSP is to support ongoing conservation stewardship of working agricultural lands by providing payments and assistance to producers to maintain and enhance the condition of the resources. To implement the Secretary's vision, the program will reward owners and operators of agricultural lands for their conservation stewardship efforts, and assist them with the implementation and maintenance of additional conservation measures that can improve the natural resource conditions of their agriculture operations. CSP particularly targets producers and activities that can provide the greatest additional benefits for the resource concerns identified in this rule and in CSP sign-up announcements. NRCS is also encouraging those who do not meet the sign-up requirements for CSP to initiate a review of the natural resource conditions on their land and begin or continue moving toward achieving the minimum conservation requirements to enter CSP at a later sign-up. Other USDA programs may be available for technical or financial assistance to help them achieve their resource management goals.

***CSP: An Entitlement Program With a Budget Cap***

As originally enacted, the Conservation Security Program was an entitlement program where many producers would have received payments if they were eligible. The Administration has been working diligently to complete the regulations for CSP. While developing the regulations to implement CSP, USDA has confronted several challenges while trying to balance conflicting pieces of legislation. The greatest challenge of

these continuing changes was to design a new conservation entitlement program with a cap on its total expenditures over multiple years. Subsequent to the enactment of the 2002 Act, the Omnibus Bill of 2003 amended the Act to limit CSP's total expenditures to a total of \$3.8 billion over eleven years (Fiscal Year 2003 through Fiscal Year 2013). The statute did not provide direction as to how the Secretary should implement a broad entitlement program with the statutory fiscal constraints.

The Omnibus Appropriations Bill for Fiscal Year 2004 (Conference Report H. Rpt. 108-401), however, contains language that, if enacted, would remove the \$3.8 billion funding limitation for the program over eleven years, but also institute a cap for Fiscal Year 2004 of \$41 million. While considering the potential change in law, the Department decided to publish and seek public comment on the preferred CSP alternative contained in this proposed rule. Under the preferred alternative, NRCS can implement CSP either with or without an expenditure cap. In the interim, the Administration will continue to consider the potential program design and implementation issues that would arise if current law were amended and the multiple-year expenditure cap were removed. Pending the enactment of this legislation, NRCS intends to publish a supplement to this proposed rule to address the potential changes in law.

Any limit imposed by a budget cap greatly reduces the potential scope of the program. For example, USDA's Economic Research Service (ERS) estimates that over 1.8 million farms and ranches may be eligible for CSP, using the land eligibility criteria found in the authorizing legislation. If all of these agricultural operations were enrolled, the cost of the program would exceed the current \$3.77 billion cap potentially in the first sign-up. In contrast, NRCS estimates that the budget cap would allow less than 50,000 total agricultural operations to participate over the life of the program. Estimates derived from a variety of analyses indicate that the average Tier III contract, based on nationally averaged data, could be near \$15,000 per year. If contracts were an average of 7 years in duration, the statutory funding could support as estimated 30,000 Tier III contracts. The average Tier I and Tier II contracts could be near \$7,000 annually. If contracts were to average 5 years in duration, the statutory funding could support an estimated 90,000 Tier I and II contracts.

Furthermore, NRCS expects that a large number of producers will seek

participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus the statutory cap on technical assistance of 15% becomes another limiting factor for implementing CSP. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the available funds.

The Secretary is proposing ways to address the capped entitlement issue and still deliver an effective CSP program by conducting periodic CSP sign-ups and through the use of additional sign-up eligibility requirements, contract requirements for additional conservation treatment, enrollment categories for determining funding, and constrained base and practice payments.

In this rulemaking NRCS is proposing an approach based on five elements:

1. Limit Sign-ups: Conduct periodic CSP sign-ups.

2. Eligibility: Criteria should be sufficiently rigorous to ensure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.

3. Contracts: Requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.

4. Enrollment Categories: Prioritize funding to ensure that those producers with the highest commitment to conservation are funded first.

5. Payments: Structure payments to ensure that environmental benefits will be achieved.

Below is a detailed discussion of the proposed approach as well as other alternatives. NRCS seeks comment on its overall approach and on the alternatives.

#### *NRCS Preferred Approach*

1. Limit Sign-Ups: Conduct Periodic CSP Sign-Ups

NRCS proposes to offer periodic CSP sign-ups, similar to sign-ups conducted by USDA for the Conservation Reserve Program (CRP). NRCS would publish a CSP sign-up announcement prior to the opening of the sign-up period. The public sign-up announcement would include important programmatic information (as discussed in Section 1469.20 of the regulation), including the length of the sign-up period and the "size" of the sign-up (as measured in the total dollar value of the CSP contracts NRCS enroll into the program from a given sign-up).

NRCS believes implementing CSP through sign-ups is the best way to

manage and effectively deliver the program.

2. Eligibility: Criteria Should Be Sufficiently Rigorous To Ensure That Participants Are Committed to Conservation Stewardship.

Additionally, Eligibility Criteria Should Ensure That the Most Pressing Resource Concerns Are Addressed

The CSP statute defines eligible producers as those who submit an approved conservation security plan and enter into a CSP contract to carry out the conservation security plan. Eligible land is defined as all private agricultural land, including incidental forested land, excluding land that is under a CRP, WRP, or GRP contract, or that has not been planted or considered to be planted in the last 4 of the 6 years preceding the enactment of the 2002 Act.

To ensure that CSP participants have a demonstrated commitment to conservation, NRCS is proposing to require CSP applicants to address specified resource concerns, soil quality and water quality for tier I and tier II levels prior to program enrollment; and NRCS estimates that requiring existing conservation stewardship will increase the environmental benefits generated by the program.

Soil Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Soil Condition in Quality Criteria of the NRCS technical guides. Soil condition in the NRCS technical guides includes concerns related to depletion of soil organic matter content and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence, root penetration and overall soil productivity.

Water Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Quality Criteria for Water Quality of the NRCS technical guides, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters and excessive nutrients and pesticides in ground waters.

Conservation systems developed for the purpose of meeting quality criteria for water quality and soil quality will vary depending on site characteristics including: Slope, climate, soil texture, and other soil characteristics and agricultural operation management considerations. Conservation systems are designed to match the particular business objectives and specific location of the agricultural operation. Conservation practices typically

installed on cropland systems might include: Crop rotation, residue management, fertilization, weed control, insect control, buffers, field borders and irrigation water management, if irrigated. Conservation practices typically installed on orchard and vineyard systems might include: Crop selection, residue management, fertilization, weed control, insect control, buffers, field borders and irrigation water management, if irrigated. Conservation practices typically installed on pasture systems might include: Pasture and hayland planting, fertilization, grazing management, haying, weed control, water facilities, cross fencing and irrigation water management, if irrigated. Conservation practices typically installed on rangeland systems might include: Prescribed grazing, brush management, prescribed burning, water development, fencing, riparian area management, weed control and range seeding.

Additionally, to ensure that CSP's limited resources are focused first on the most pressing environmental concerns, NRCS is proposing to impose eligibility requirements based on selected priority watersheds. Only producers located within those watersheds will be eligible for a given sign-up. A majority of the agricultural operation must reside in the selected watershed. The eligible watersheds will be announced and identified through CSP sign-up announcement. The watersheds selected for CSP eligibility may vary in each CSP sign-up.

NRCS proposes to identify watersheds (using eight-digit hydrologic unit codes developed by the U.S. Geological Survey) around the nation based on objective information from natural resource, environmental quality, and agricultural activity data. The watershed prioritization process will consider several factors, including the vulnerability of surface and groundwater quality, the potential for excessive soil quality degradation, and the condition of grazing land in the watershed.

Limiting participation to high-priority watersheds in this manner will allow NRCS to reduce the administrative burden on applicants, as well as, technical assistance costs of processing a large number of applications that cannot be funded. For example, data shows that in fiscal year 2003 about 750,000 agricultural producers received some kind of USDA program benefits. Assuming that as many as 500,000 producers might apply for enrollment in each CSP sign-up and that current funding would only support about

50,000 total contracts, the majority of applicants would have completed an extensive application process only to be frustrated by the limitation on funding. Additionally, NRCS would have to provide technical assistance to 450,000 producers who would not be able to participate in CSP. Because of the statutory limit on technical assistance to 15% CSP's total funding, this would not be feasible.

By using a system of selected watershed and enrollment categories, NRCS can make the program available ultimately in all 50 States, the Caribbean Area, and the Pacific Basin area. The program would benefit participants without regard to the size of their operation, crops produced, geographic location, or any other factor unrelated to the conservation characteristics of the operation.

### 3. Contract Requirements Should Be Sufficiently Rigorous To Ensure That Participants Undertake and Maintain High Levels of Stewardship

The CSP statute requires that a Conservation security plan for a Tier I CSP contract address one or more significant resource concerns on part of an agricultural operation. NRCS is proposing that CSP participants must address the nationally significant resource concerns of water quality and soil quality as described in Section III of the NRCS Field Office Technical Guide (FOTG).

The CSP statute requires that a conservation security plan for a CSP Tier II contract must address one or more significant resource concerns on the entire agricultural operation. NRCS is proposing that CSP participants must address the nationally significant resource concerns of water quality and soil quality as described in Section III of the NRCS FOTG. In addition, by the end of the contract period, they must address an additional resource concern to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

The CSP statute requires that a conservation security plan for a CSP Tier III contract must address all significant resource concerns on the entire agricultural operation.

NRCS is proposing that CSP participants in all tiers must address, by the end of the contract period, additional requirements as required in the enrollment categories as selected by an applicant or in the sign-up announcement over the contract acreage.

NRCS is proposing, in addition to the statutorily mandated contract requirements, to give funding priority to

producers who are willing to undertake enhancement activities, such as addressing locally identified resource concerns or providing important assessment and evaluation information.

### 4. Prioritize Funding To Ensure That Those Producers With the Highest Commitment to Conservation Are Funded First

To effectively implement the program, NRCS believes it is necessary to prioritize applicants based on their existing level of conservation performance and their willingness to undertake additional conservation activities above and beyond the regulatory contract requirements for their tier of participation. This does not mean that individual contracts must compete with each other according to an Environmental Benefits Index, as in the Conservation Reserve Program. Rather, NRCS would place applicants in enrollment categories and include in the sign-up announcement the order in which those categories would be funded. All applicants in a category and a subcategory selected for funding would be offered a CSP contract. NRCS will develop criteria for construction of the enrollment categories such as the soil conditioning index, soil and water quality conservation practices and systems, and grazing land condition.

Sub-categories may be established within the categories. All applications which meet the sign-up criteria will be placed in an enrollment category regardless of available funding. An application will be placed in the highest priority enrollment category or categories for which the application qualifies. Categories will be funded in priority order until the available funds are exhausted.

One issue arises in grouping contracts by enrollment categories. What should happen if the first five priority categories can be fully funded, but the sixth cannot? Should NRCS prorate the funding for the sixth category, not fund that category at all (saving funds for a future sign-up), or choose amongst category six applicants according to some criteria (for example by date of application or by identifying priority subgroups)? NRCS invites comment on this issue.

### 5. Structure Payments To Ensure That Environmental Benefits Will Be Achieved

The Act requires base payments of CSP to be based on 2001 national rental rates by land use category or "another appropriate rate that ensures regional equity" (emphasis added). NRCS proposes using regional and local land

rental data for FY2001 with adjustments to ensure consistency and regional equity. In addition, NRCS proposes to apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments (for all tiers of participation). The more that program payments are made toward aspects directly related to additional environmental performance, rather than on base payments, more conservation is likely to be obtained. The results of the CSP proposed rule economic analysis indicates that, all other payment held constant, the lower the reduction factor used on regional rental rates, the less the effect the base payment has on the overall producer payment. This results in more net environmental benefits accruing to the program. This will lower payments to producers, but does it in an equitable manner and allows more producers to participate within the available funding. NRCS proposes that the base rate, once established, will be fixed over the life of the program. NRCS invites comment on the appropriate reduction factor, and whether it should be fixed or vary by sign-up.

To ensure funding go towards the greatest environmental benefit, NRCS is also proposing that the practice payments be constrained to below that offered by other USDA cost-share programs.

NRCS is proposing to utilize the enhancement component of a CSP payment to increase conservation performance regardless of the tier of participation (including activities related to energy conservation) as a result of additional effort. Enhancement activities would be determined by the State Conservationist with consideration of national priorities and any emphasis designated in the sign-up announcement. The statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

- The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements in Section 1469.5. For example, activities that increase the performance of management practices (management intensity) that contribute to additional improvement to the condition of the resources, or provide for more efficient resource utilization and energy conservation;

- An improvement in a priority local resource condition, as determined by NRCS. For example, addressing water quality and wildlife concerns by the installation of riparian forest buffers to provide shade and cool surface water

temperatures to restore critical habitat for salmon;

- Participation in an on-farm conservation research, demonstration, or pilot project. For example, conducting field trials with cover crops, mulches, land management practices to control cropland and stream bank erosion;
- Cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area. For example, carrying out land management practices specifically called for in a watershed plan that control erosion and sedimentation, improve soil organic matter levels, reduce surface water contamination, and improve the condition of related resources; or
- Implementation of assessment and evaluation activities relating to practices included in the Conservation Security Plan, such as water quality sampling at field edges, drilling monitoring wells and collecting data, and gathering plant samples for specific analysis.

#### *Alternative Approaches*

In addition to the preferred approach, NRCS considered several alternatives. NRCS is seeking comments on the proposed approach and these alternatives.

#### 1. Use Enrollment Categories To Prioritize CSP Resources in High-Priority Watersheds Identified by NRCS Administrative Regions

This alternative approach is similar to the "NRCS Preferred Approach" outlined above as it focuses CSP participation in high-priority watersheds that are identified using natural resource and land use data. Importantly, this approach differs in that it does not restrict program eligibility to a limited number of watersheds.

Under the "NRCS Preferred Approach," the agency proposes to set a "high bar" for producer eligibility in two steps—by (1) requiring producers to have at a minimum already addressed all national priority resource concerns, and (2) restricting eligibility to high-priority watersheds.

This alternative proposes a modified process for determining eligibility and using watersheds to focus CSP's resources. The proposed alternative process is outlined below:

- NRCS will set a high bar for producer eligibility by requiring producers to have at a minimum already addressed all water quality and soil quality resource concerns (the minimum conservation requirement increases for

each CSP Tier, as under the "NRCS Preferred Approach"). In addition, this alternative may require a higher level of demonstrated conservation (e.g., requiring a minimum soil condition index score).

- Prior to each sign-up period, NRCS will rank all watersheds in the country based on objective data (e.g., land use, agricultural activity, and/or environmental quality vulnerability). The watersheds will be ranked separately in each NRCS administrative region in order to account for regional and local resource concerns and priorities. (Watersheds are land regions that drain into a river or other body of water, and natural resource agencies designate watershed boundaries for planning purposes. Under this approach, NRCS will use watershed boundaries of a "medium" size [at the eight-digit hydrologic unit scale developed by the U.S. Geological Survey].)

- NRCS will then place the regionally prioritized watersheds into CSP enrollment categories. The priority ordering of watersheds may change with each CSP sign-up, depending on national conservation priorities and resource conditions.

- NRCS will place eligible producers into the watershed-based enrollment categories.

- Producers will be further ranked in each watershed-based category according to their willingness to implement additional conservation, existing level of conservation effort (e.g., number of targeted conservation practices already installed and/or soil condition index score), and other program participation priorities as determined by the Secretary.

- NRCS will announce through a CSP sign-up notice the priority ranking of watersheds and the enrollment categories the agency has placed the watersheds. The sign-up notice will also announce the dollar "size" of the CSP sign-up, as well as provide an estimate of how many enrollment categories will likely be funded.

There are many benefits to prioritizing and focusing conservation activities in watersheds with recognized resource concerns and environmental quality vulnerability. Given the statutory spending cap and the relatively limited number of agricultural operations that could be enrolled into CSP, it is important to concentrate CSP's resources in order to generate demonstrable conservation improvements in areas of the country that face the greatest environmental challenges. In addition, assessing and ranking watersheds prior to a CSP sign-

up allows NRCS to select the conservation practices, management activities, and enhancement activities that are best suited to the unique resource conditions and challenges in high-priority watersheds. Identifying high-priority watersheds and awarding contracts through CSP may provide a stimulus for better watershed planning and coordination of conservation activities, as well as allow Federal and State natural resource agencies to establish baseline environmental quality conditions and more effectively assess conservation effects in a given watershed. Finally, ranking and prioritizing watersheds according to NRCS regions allows the program to emphasize regional resource concerns and priorities. This process of ranking would be similar to the NRCS preferred approach except that applicants would not be prevented from applying to CSP if they are located in a low-priority watershed.

Under this alternative approach, a substantially larger number of producers may apply for CSP contracts than under the "NRCS Preferred Approach." To effectively implement CSP using this alternative, NRCS may have to explore options including setting a higher bar for program eligibility, in order to reduce the agency's additional administrative burden of working with producers and processing applications.

## 2. Apportion the Limited Budget According to a Formula of Some Kind, for Example by Discounting Each Participant's Contract Payments Equally (i.e., Prorate Payments)

Under this approach, NRCS would select all eligible applications for funding, but would reduce the level of funding for each eligible contract by an amount that would limit the total of all contracts to the budget limitation. This proration has the advantage of allowing all eligible applicants to become contract holders. Of course, the key disadvantage is that contracts would not be fully funded, and participants would receive potentially a small share of what a fully funded contract would provide while still requiring completion of the contract. Thus, they would have less incentive to undertake demanding conservation activities and CSP would not achieve its objectives. Complicating this approach is the problem that applicants would not know what share they would get until all contracts were approved, at which time they may find the contract undesirable. Thus it would be hard for NRCS to predict the ultimate expenditure of the program.

With the technical assistance funding cap of 15 percent, there would not be

enough assistance available to assist all potential applicants and participants to complete the assessment and contract requirements to receive their payment.

## 3. Close Sign-Up Once Available Funds Are Exhausted (i.e., First Come, First Served)

In theory, NRCS could open CSP sign-ups and fund the first eligible applications submitted. This would place an unnecessary pressure on applicants to be first in line, and have no bearing on the expected conservation benefits of the contracts. In addition, it would be difficult for NRCS to know upon receipt of an application exactly what it would cost, mainly because detailed contract activities and the tiers of participation require some discussion and consideration by both the participant and NRCS field staff. Thus NRCS views this option as inappropriate and unworkable.

## 4. Limit the Number of Tiers of Participation Offered

NRCS believes that excluding tiers of participation, for example by offering only Tier III contracts, is neither consistent with the Act nor promotes delivering the greatest net benefits from the program. At each sign-up, NRCS will offer all three tiers of participation. It will award contracts based on the placement in enrollment categories regardless of the tier of participation.

## 5. Only Allow Historic Stewards To Participate—Only Those Who Have Already Completed the Highest Conservation Achievement Would Be Funded

This approach would severely constrain the program participation and would not require the use of new practice payments. There would also be a reduced level of technical assistance required since all the basic resource concerns would be addressed requiring no practice design and implementation. On the other hand, available funding within the contract cap could be focused on enhancements, including pilots and monitoring of results. A disadvantage of this approach would be that it may reduce participation from less capitalized, limited resource and beginning farmers and ranchers, and it may also reduce access to those producers who have not traditionally participated in NRCS programs.

### *Minimum Level of Treatment for Addressing Resource Concerns in CSP*

As discussed before, NRCS is proposing to require that participants in CSP address resource concerns to a minimum level of treatment that meets

or exceeds the resource quality criteria according to the NRCS Field Office Technical Guides in terms of land management and/or structural practices for each land use. Only land that meets or exceeds the required level of treatment for the identified resource concerns can be included in the CSP program for payment. For example, the rule proposes soil quality and water quality as national significant resource concerns. That means that each participant must address all water quality and soil quality concerns to the quality criteria level. In the case of participation in Tier I, such treatment can address a subset of the agricultural operation, as described in the statute.

NRCS may modify the requirements as new conservation practices and management techniques are developed and refined or as local conditions dictate. Participants in CSP would not need to conform to any new requirements not specified in their contract.

The term non-degradation standard as used in the CSP statute means the level of measures required to adequately protect, and prevent degradation of natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the Natural Resources Conservation Service. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by EPA and other regulatory agencies.

In conditions where a resource concern is not pertinent, prevalent, or likely or for the land steward who has already met the minimum requirements for resource treatment, a participant may have to undertake few or no activities for enrollment in CSP. For example, where soil quality is already adequately addressed, NRCS will not require participants to undertake additional unnecessary soil management practices, as determined by the NRCS technical guides. It is the intent of NRCS that the required level of treatment will demand specific actions or companion practices (or in most cases a choice among actions and practices) only to the extent that those practices are required to meet prescribed resource conditions.

### *The Proposed CSP Application and Sign-Up Process*

In preparation for the CSP sign-up, NRCS would receive public comment on the process and criteria used to select the eligible priority watersheds and enrollment categories used for selecting application for funding within the watersheds. Since this is a new capped

entitlement program, NRCS proposes to preserve program flexibility by not including all the specifics in the rule, but to seek additional public input over the different sign-up periods. The sign-up would be similar to CRP, and would allow NRCS the flexibility to address problems such as the local resource conditions deriving from a severe drought, habitat for threatened and endangered species (such as salmon in the Pacific Northwest), assisting fruit producers in changing their pesticide practices in the face of possible regulatory measures, and slowing surface runoff of nutrients in areas contributing to hypoxia and other water quality problems. As opposed to CRP, the criteria for application and selection would be transparent by defining through a public notice and posting on the web the watershed eligibility criteria and enrollment categories for funding.

NRCS will make the CSP applicant sign-up process as transparent as possible. Within priority watersheds, CSP targets the producers who meet high standards of conservation and environmental management on their operations. To apply for CSP, both the producer and their operation must first meet the basic eligibility criteria, including having the majority of the agricultural operation within a selected priority watershed. With the expected demand on the program, NRCS will ask potential participants to undergo a self-assessment process to determine if their operations can meet the standards of CSP and qualify for program participation. The self-assessment process would be completed using a self screening questionnaire for each land use to be enrolled. The screening questionnaire will ask the producer a series of resource management questions for each part of their operation. The questions will request information about the major activities necessary to meet the minimum requirements for water and soil quality, such as crop rotations, erosion control, tillage practices, nutrient and pest management, grazing practices, irrigation scheduling, use of buffer practices, and conservation practice record keeping. If the producer has successfully completed the screening process, they may submit an application.

Additionally, producers must prepare a benchmark inventory of their existing conservation treatment on the agricultural operation to document the operations resource condition on their operation. Once the producer has successfully met the eligibility requirements, completed the benchmark inventory, and completed other sign-up

requirements, they may submit an application. Based on the resource inventory of benchmark conditions and a follow-up interview, NRCS will determine in which program tier (if any) the applicant could participate and the enrollment category placement.

The following CSP sign-up steps illustrate the determinations that NRCS would make for a sign-up:

(1) NRCS determines sequence of watersheds for participation based on available funding.

(2) NRCS determines the resource requirements, the criteria for enrollment categories, and any other additional criteria for the sign-up announcement in order to both optimize environmental performance and to ensure that statutory budget caps are not exceeded.

(3) NRCS announces the CSP sign-up and publishes the established CSP sign-up requirements.

(4) The applicant and their land and agricultural operation must meet the basic eligibility criteria described in subsections 1469.5 (a) and (b).

(5) The producer completes a self screening questionnaire for each land use to be enrolled.

(6) If the producer meets the basic eligibility requirements, successfully passes the screening questionnaire, completes a benchmark condition inventory, and satisfies the sign-up criteria including information about enhancement activities, the producer then develops an application to the program.

(7) The producer submits the completed CSP application to NRCS as described in the sign-up notice.

(8) NRCS determines whether the applicant and level of resource treatment meet the requirements established for the sign-up.

(9) If the applicant meets the requirements, NRCS places the applicant in a tier of participation and an enrollment category. NRCS informs the applicant of those determinations.

(10) Based on the available funding, NRCS selects applications within the enrollment categories as outlined in the sign-up announcement.

(11) If the applicant wishes to proceed as a CSP participant, NRCS conducts a follow-up interview, confirms the application information, and works with the applicant to complete a Conservation Security Plan.

(12) NRCS verifies the information and writes CSP contracts with the selected applicants. At this point, the applicant becomes a participant, or equivalently, a contract holder.

(13) The activities in the contract are undertaken as scheduled, and NRCS

pays the appropriate sums to the contract holder.

#### *CSP and Limited Resource Producers*

NRCS is committed to making CSP accessible to limited resource farmers and ranchers, and seeks comment on how best to accomplish that goal. NRCS believes that this goal can and should be fully consistent with a commitment to produce the greatest net benefits with the program. One approach NRCS is considering would be to ensure that sign-up criteria allow for a priority enrollment sub-category that targets limited resource operations with particular conservation concerns. As indicated above, NRCS proposes to limit practice payments to below other USDA programs. However, the agency could consider allowing practice payments to be higher for limited resource producers, but below the statutory cap of 75 percent. NRCS welcomes other examples and suggestions for identifying conservation opportunities related to limited resource operations.

NRCS also welcomes comment regarding how other programs could best help limited resource and other less capitalized producers to become eligible for CSP, given the stewardship standards to participate in CSP.

#### *CSP in Relation to Other NRCS Programs*

Based on a 2002 Farm Bill concept of achieving the optimal environmental benefits while maintaining the economic viability of the agricultural operation, CSP is viewed as the potential integrator of all conservation programs within the Department. As described in the Secretary's "Food and Agricultural Policy" document, the portfolio approach is one that employs coordinated land retirement, stewardship incentives, conservation compliance, and regulatory assistance to achieve enhancements to both the agricultural sector and the environment. NRCS has worked to integrate CSP into a "portfolio" approach for conservation programs delivery within USDA. Through programs such as Conservation Technical Assistance (CTA), Conservation Reserve Program (CRP), Wetlands Reserve Program (WRP), Grassland Reserve Program (GRP), Environmental Quality Incentives Program (EQIP), and the Wildlife Habitat Incentives Program (WHIP), USDA is able to offer a suite of effective and voluntary programs to assist producers in their efforts to improve the environmental performance of agriculture.

NRCS is seeking comment on the opportunity to use CSP in a

collaborative mode with other programs to effectively leverage the Federal contribution to resource improvement and enhancement. Other governmental agencies, including State, local, and Tribal governments, as well as private and not-for-profit organizations, are playing an ever-increasing role in the delivery of technical assistance and in incentive programs for conservation. NRCS is exploring the opportunities for collaboration in these collective efforts and in developing public-private partnerships and joint programs to leverage Federal resources and improve program access and implementation. For example, broadening the support system for wildlife habitat development and management is an emerging challenge in program design and program delivery that can be augmented through collaboration and leveraging of funds. In the West, about 80 percent of the wildlife species depend on agricultural land to provide critical habitat, food, and cover. Improvements to the landscape—including wetlands, grasslands, flood plains, and riparian zones—through programs like CSP and other USDA conservation programs can help support biodiversity of wildlife and aquatic species and provide benefits in the form of recreation, hunting and other forms of agro-tourism. By focusing in priority watersheds and by proposing those participants agree to additional conservation treatment through enhancement, NRCS believes it will offer greater opportunities for wildlife habitat development and management. NRCS is seeking comment on how to implement a program that uses collaboration and leveraging of funds to achieve resource improvements on working agricultural lands through intensive management activities and innovative technologies.

NRCS believes that cost share programs such as EQIP, WHIP, and continuous CRP, as well as other Federal, Non-Federal, State, local and Tribal programs, should work together as complements with CSP, rather than substitutes. For example, this rule proposes that CSP will seek to minimize installation of structural practices by offering a substantially reduced list of eligible practices and lower cost-share rates. Alternatively, producers can install structural practices through other State or Federal programs, such as WHIP, and then qualify for a future CSP contract to help with the maintenance of those and other practices. In addition, unlike EQIP and WHIP, CSP will emphasize producers who have already met the resource concern's minimum level of treatment, encourage them to do

more, and reward them for their exceptional effort. CSP differs from existing programs by focusing on a whole farm planning approach. Programs such as EQIP do not. In effect, the program will provide an incentive to seek cost share from other programs that are well targeted and part of a larger integrated planning approach. NRCS anticipates an increase in both quantity and quality of applications in other USDA conservation programs.

CSP could be a useful means for showcasing those producers who have achieved a level of conservation stewardship that can inspire others to reach a similar level of resource treatment. However, it is apparent with the budgetary cap on the program that only a portion of the agricultural community will become CSP participants. Participation will not be automatic. NRCS plans to develop a CSP application process that will direct individuals who do not meet the stringent requirements of CSP to another complimentary program offered by USDA or other state and local entities. This aspect of CSP implementation may have the effect of creating additional interest in programs such as CTA, EQIP, WHIP and the continuous CRP in situations where the producer is seeking technical or financial assistance to achieve the desired level of resource treatment and then to re-apply for CSP participation.

#### *Environmental Performance, Evaluation and Accountability*

NRCS intends to make CSP the most accountable conservation program it has ever implemented. In its pursuit of targeting the greatest resource benefits in a cost-effective manner, NRCS will endeavor to use CSP as an opportunity to learn more about the benefits and costs that derive from conservation practices. Careful evaluation and monitoring activities can show what works, what does not, and what it depends on. Through the program's enhancement provisions, participants will test intensive management activities and monitor the changes in environmental conditions, thus providing the data necessary for NRCS and other agencies to ground-truth its predictive models. NRCS can use these results to refine the targeting and activities of the CSP and other programs, and produce better overall program performance. Because of the limited program funding, NRCS is proposing that CSP require applicants to have achieved a high level of environmental performance to be eligible for CSP. The applicants must also be willing to achieve more, which

will provide additional conservation and improved environmental performance.

Given the limited CSP budget, NRCS believes that one of the most important goals of CSP is to improve the tools it uses to target funds to the most effective conservation activities and the most pressing resource concerns. NRCS looks forward to working with enhancement project participants to develop approaches to monitor the environmental changes that derive from historic stewardship and new contract activities. All data would be handled consistent with the confidentiality provisions provided for in the Act. Results would be analyzed and portrayed in an aggregate fashion.

NRCS sees few downsides to this approach, but it does mean that some of the CSP resources will go to studying the effectiveness of conservation practices rather than installing them. NRCS strongly believes that in the long run this is a cost effective use of funds as one of the statutory enhancement categories. NRCS welcomes comments and suggestions for designing and implementing monitoring approaches, and suggestions as to what data and information would be most useful to ensure a high level of accountability for CSP.

By concentrating participation for each sign-up for CSP in specific watersheds and addressing priority resource concerns, NRCS will be better able to provide high quality technical assistance, adapt new technology tools, and assessment techniques to critically evaluate the program. Additionally NRCS will have the opportunity to evaluate the effectiveness of the treatment in a focused effort where it will be more practical and reasonable to relate to environmental performance.

#### *Summary of Comments to the Advanced Notice of Proposed Rule Making*

In developing this proposed rule, NRCS carefully considered its experience with conservation programs and the public comments it received through an advanced notice of proposed rule making (ANPR) found in 7 CFR, part 1469.

CSP raises policy issues that have not been addressed in other conservation programs. NRCS convened nine focus groups in November, 2002, to obtain public input related to CSP proposed rule development, and representatives from key agricultural and stakeholder groups were invited to participate. In addition, NRCS organized 5 workshops to obtain feedback on CSP and its implementation from producers and NRCS field staff. Following these

discussions NRCS issued an ANPR on February 18, 2003, to give the broader public an opportunity to comment on key issues that arose during the workshops and focus group sessions. Many State Conservationists held State Technical Committee or outreach meetings to discuss the ANPR and encourage input. This preamble summarizes the comments NRCS received from the ANPR (through April 3, 2003). In developing this proposed rule, NRCS carefully considered its experience with conservation programs, information from the focus group sessions, and the public comments it received through the ANPR.

This proposed rule lays out the approach NRCS believes will best achieve the vision of the Secretary and respond to the suggestions from the public. Some policy decisions taken in the rule are highlighted in this preamble for further public comment.

The Summary of Provisions has a section by section summary of the approaches NRCS used in the rule. A summary of comments on the key issues NRCS identified in the ANPR is as follows:

NRCS received 704 responses with 3027 specific comments concerning the development of this proposed rule as a response to the ANPR. Commenters included individuals; representatives of academic institutions; students; agriculture producers; State and local governments; Tribes, agricultural organizations; and, environmental and conservation organizations.

Although NRCS received comments from 46 States and the District of Columbia, the majority of the comments came from states in the Midwest. Respondents uniformly supported the concept behind the CSP legislation and the expenditure of Federal funds to implement the program.

*1. Resource concerns and “significant” resource concerns.* The Act requires conservation security plans to address one or more “significant” resource concerns. NRCS explained in its ANPR that resource concerns may be as general as soil erosion or water quality or as specific as soil erosion by water or ground water quality. Although the status and changes in some resource concerns cannot be directly measured, the NRCS Field Office Technical Guide (FOTG) provides the basis for guidance and specifications for addressing specific resource concerns and tools for measurement.

NRCS received and evaluated 153 comments on this issue. At least 54 respondents named resource concerns that NRCS should deem significant. Preservation and/or restoration of native

prairie were specified as significant resource concerns by 33 respondents, making it the most-cited resource concern. The next most-cited resource concerns were soil and water-related issues, including: soil quality improvement, soil erosion control, water conservation, water quality improvement, protection of public drinking water supplies, and the dewatering of streams, with water quality overall being the issue respondents emphasized most. Responders also suggested the following significant resource concerns: pest management, nutrient management, protection of fish and wildlife habitat, noxious weeds, and protection of pollinators. At least 70 percent of the respondents addressed who should determine which resource concerns were significant. Twenty-two respondents said the Federal government should set national priorities, and then allow State and local governments to add additional concerns to the list. Ten respondents suggested determining resource concerns on a State-by-State basis via the State Technical Committees. Seven respondents said States should identify the overarching resource concerns, and then allow local working groups to define the resource concerns in a more specific way. Finally, sixteen respondents proposed that local working groups be given the authority to determine significant resource concerns. The majority of the respondents favored giving responsibility to either the State Conservationist (with State Technical Committees input), or to both the State and local levels (with the State Technical Committee and the local working groups input).

NRCS evaluated whether significant resource concerns should be designated by the national, State or local level and, if determined nationally, what should be those specific resource concerns. NRCS proposes to designate water quality and soil quality as nationally significant resource concerns. NRCS is emphasizing water quality and soil quality as nationally significant resource concerns because of the potential for significant environmental benefits from conservation treatment that improves their condition. In addition, NRCS has a long history of developing and applying sound science and technologies that effectively address soil erosion and water quality problems. Public concerns about soil as a natural resource have transcended well beyond the traditional measures for controlling soil erosion. In recent years, concerns about air and water quality have become

increasingly important to the country as a whole. To address these environmental goals and to help secure our Nation's ability to produce food and fiber we must now go beyond soil erosion control and direct our efforts to improvements in soil quality. Research shows that the most practical way to enhance soil quality and function is to achieve better management of soil organic matter or carbon. Soil organic matter is especially important in mineral soils, because it can be easily altered by agricultural operations and land management practices on both cropland and grazing land.

Soil organic matter enhances water and nutrient holding capacity and improves soil structure, thereby holding nitrogen, phosphorus, and pesticides in place and helping to keep them out of surface water. Intensive management directed at improving soil quality has many ancillary improvements to environmental quality and has the ability to reduce the severity and cost of natural disasters such as drought, flooding, and disease. In addition, increasing soil organic matter levels can have many positive effects, including:

- Reducing atmospheric carbon dioxide levels that contribute to climate change.
- Reducing dust, allergens, and pathogens in the air.
- Sediment and nutrient loads decline in surface water as soon as soil aggregation increases and runoff decreases.
- Improved ground and surface water quality due better structure, infiltration, and soil biology make soil a more effective filter.
- Crops and forages are better able to withstand drought when infiltration and water holding capacity increase.
- Organic matter may bind pesticides, making them less active. Soils managed for organic matter may suppress disease organisms, which could reduce pesticide needs.
- Crop health and plant vigor increase when soil biological activity and diversity increase.
- Wildlife habitat improves when residue management improves.

Water quality concerns include a wide variety of potential contaminants from agricultural operations including: sediment, nutrients, pesticides, salts and pathogens. Runoff carries soil particles to surface water resources, such as streams, rivers, lakes and wetlands. Nutrients can enter water resources from runoff, point source contamination or by leaching. Pesticides are delivered to water resources similar to the transport mechanisms for nutrients—through runoff, run-in, and

leaching. In addition, pesticides can become attached to soil particles and deposited into water bodies with rainfall and other forms of precipitation. Irrigation return flows often carry dissolved salts from cropland and pastures, as well as nutrients and pesticides, into surface- or groundwater. High levels of salinity in irrigation water can reduce crop yields or limit crop growth to an unacceptable level.

NRCS is proposing to allow participants to address additional resource concerns through certain types of enhancement activities.

Enhancement activities are expected to produce additional environmental benefits through additional management activities such as specific actions regarding pest management or nutrient management and by addressing additional concerns such as soil erosion control, water conservation, noxious weeds, and the protection of pollinators or protection of fish and wildlife habitat. This proposal ensures that every State will address national priorities. It will allow States to address other significant natural resource issues through the identification of local resource concerns through enhancement activities. NRCS requests additional public comment on the use of nationally significant resource concerns.

*2. Minimum requirements for each tier.* Each of the three CSP tiers specifies:

(1) Eligibility criteria for participants; (2) the payments participants can receive; and (3) the conservation activities the participants must maintain or undertake as a condition of their CSP contracts.

Section 1238A(d)(6) of the Act requires the Secretary to establish minimum requirements for each of the three tiers of participation. The Act allows the minimum requirements to be as discrete as a list of specific practices or as general as a bundle of conservation practices and activities that achieve a desired resource outcome. The Act requires at least a minimum level of treatment which has been further defined in this rule as significant resource concerns and quality criteria in section 1469.4.

In the ANPR, NRCS asked for specific comments on the minimum requirements for each tier, and whether the requirements should apply to all contracts nationally. NRCS received 572 comments on this issue, of which at least 480 were identifiable as "form" responses from the sustainable agricultural community. A majority of the respondents endorsed minimum requirements that "reward strong environmental performance." There was

considerable support for minimum requirements that result in improvement of the natural resources beyond the requirements in the Act. Some degree of support exists as well for use of practice bundles or conservation systems rather than individual practices. A small number of commenters also suggested favoring producers who have already obtained a conservation plan and implemented it. Comments were split between requiring minimum national requirements for all CSP contracts and CSP requirements being determined at regional, State, or local levels. Several of those who recommend minimum national requirements suggest that NRCS allow State and local interests to add to the list of national requirements. As indicated above, NRCS has proposed to set national eligibility requirements to reward producers who have shown the initiative toward strong environmental performance on their land. Water quality and soil quality are designated as nationally significant resource concerns. NRCS is proposing that tier-one applicants address both water quality and soil quality resource concerns to the minimum level of treatment as a condition of eligibility for the enrolled portion of the agricultural operation. NRCS is proposing that tier-two applicants must address soil and water quality resource concerns on their entire agricultural operation up to the minimum level of treatment as a condition of eligibility and then address an additional resource concern of their choice by the end of the contract period. Tier-three applicants would address all resource concerns on their entire agricultural operation up to the minimum level of treatment as a condition of eligibility. All tiers of participation would be required to address additional activities as described in the sign-up announcement or the enrollment category placement.

NRCS proposes in Section 1469.5 to require a minimum level of treatment for the significant resource concerns used for program eligibility and tier contract requirements that will result in conservation treatment that meets or exceeds the quality criteria. The criteria will be based on accomplishment of a higher level of management intensity (e.g. continuous no-till rather than seasonal conventional tillage) rather than depending solely upon the installation of practices. This proposal requires that the agency further define "management intensity" for the various resource concerns and the degree to which the conservation treatment exceeds the quality criteria. Specific management intensity activities will be

set at the National level and tailored for state use by the State Conservationist with advice of the State Technical Committee.

*3. Payment eligibility.* The Act requires the Secretary to describe the particular practices to be implemented, maintained, or improved as part of the program. The Secretary can determine which practices receive payment. Although the Act provides for maintenance payments on existing practices and new practice payments on structural practices, the Act does not require that participants receive maintenance payments for all the practices needed to meet the required quality criteria or cost-share payments for all practices installed. NRCS sought comment regarding which practices and activities should be eligible for payment, and whether any priorities should be established for payment. NRCS received 160 comments on this issue, of which 27 of these responses were identifiable as "form" responses. A small majority of respondents supported the full range of conservation practices and activities in the NRCS Field Office Technical Guide, with some advocating innovative practices not already in the field guides. A nearly identical number of respondents support the selection of eligible practices and activities on the basis of experience at State or local levels and/or good science. A third and much smaller group of respondents support the prioritizing practices for funding, for example, a point system, in order of their relative effectiveness. Some commenters noted a possible redundancy between CSP and other programs (such as EQIP and WHIP) that include cost-share payments for installing structural practices.

This proposed rule attempts to avoid program redundancy by focusing CSP on a specific list of eligible practices, for both the new and existing practice payments, rather than the complete laundry list of available practices and promoting intensive management activities as enhancement payments. State Conservationists would have the ability to tailor the lists to assure they meet the pressing natural resource needs of a portion of their State or a multi-State area. NRCS has proposed to manage all of its mandatory programs using a portfolio approach to reduce redundancy in program areas. NRCS believes that management of USDA conservation programs using a portfolio approach will help direct applicants toward the programs that best fits their needs, thereby maximizing the conservation and improvement of natural resources.

*4. Balance of payments across base, maintenance, and enhancement.* Section 1238C(b)(2)(B) of the Act restricts the maximum base payment to a percentage of the total contract payment limitation. Base payments can be no more than 25 percent of Tier I contracts and 30 percent for Tiers II and III. NRCS asked for comments on the balance between the base payment, maintenance payment, and enhancement payment that would best reward good stewards and obtain additional conservation benefits. NRCS received 382 comments on this issue, of which 309 are identifiable as "form" responses. Consensus favored somewhat less emphasis or lower payment rates for the base payment component and greater emphasis or higher payment rates for maintenance cost-share payments. However, some supported a reasonable enhanced payment component. Views differed regarding who should determine the balance of payments, as some support giving State or local interests input in determining the ultimate balance, particularly for maintenance cost-share and enhanced payments, while others supported a national directive.

The proposed rule sets base payments to no more than 25 percent of the contract cap in Tier I, and no more than 30 percent of the contract cap in Tier II and III. It provides for a methodology to set an appropriate rate as allowed by the statute. This rate will be lower than the national rental rates through the use of a consistent reduction factor. Maintenance payments have been redesignated as "existing practice" payments and will be determined by the State Conservationist based on a national list tailored to match the needs of the locality. To increase additional net benefits, NRCS will be requiring a high level of additional conservation performance for eligibility and through the enhancement and contract requirements provisions of the program. Tier I and Tier II participants would be required to address additional significant resource concerns on their agricultural operations up to the NRCS required level of treatment. Some of the practices necessary to address those resource concerns might be funded with a new practice payment in CSP, although at a lower rate than other NRCS programs. Some enhancement activities would also require participants to pursue intensive management activities that would exceed the NRCS minimum level of treatment with the potential to provide substantial improvement to the condition of the resources. NRCS

believes this proposal encourages all participants, regardless of the tier of participation, including limited resource and beginning producers and small farms, to pursue a higher level of conservation and to participate in locally led conservation priorities, carry out record keeping, assessment activities and on-farm demonstration projects.

*5. Definition of Agricultural Operation.* The Act refers to "agriculture operations" without defining the term. NRCS has evaluated various definition alternatives, and are determined to seek public comment to evaluate the most appropriate definition considering the various forms of ownership and landowner-tenant relationships. NRCS received 76 comments on this issue, with another 27 suggested that an agriculture operation include all land owned and operated by an individual or entity, and another 25 respondents favored the use of a Farm Service Agency (FSA) number system to define an agriculture operation. A small number of respondents suggested that an agriculture operation should consist of owned land only, with at least one of those individuals wanting to narrow the definition further by limiting the definition to that land used or managed in a similar fashion.

Consistent with GPCP, NRCS proposes in Section 1469.3 to define "agricultural operation" as "all agricultural land, and other lands determined by the Chief, NRCS, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation." NRCS believes this proposed definition meets the intent of the legislation. NRCS also believes that this definition is more clear, better promotes operation-wide conservation, and could reduce the number of contracts in which a participant can engage. Active personal management as defined in the rule ensures that the participant personally provides day-to-day conservation management decisions essential to provide the intensity of management necessary to achieve the goals of the program. A participant would not need to own eligible land, but would need to demonstrate control of the land for the life of the CSP contract.

This definition results in the potential for multiple tracts and farms to be within one operation and reduces the potential number of piece-meal contracts feared by some respondents. NRCS believes that the value of making conservation management decisions

based on resources concerns is more important than fitting CSP to the design of existing commodity programs. This definition supports the many respondents who desired a program that actually benefits those who work the land.

*6. Eligible land.* In Section 1238A(b)(2), the Act specifies eligible land as cropland, grassland, improved pasture land, prairie land, rangeland, land under the jurisdiction of an Indian Tribe, as well as forestland that is an incidental part of the agricultural operation. NRCS sought comments regarding which other areas of a farm or ranch should be included in the agriculture operation, and thus be treated land under the contract. Such lands may or may not be eligible for payment, but they could be included in requirements for participation at a given Tier level. NRCS received 98 comments on this issue. Nearly two-thirds of the respondents said that the land eligible for payment should include all areas of a farm or ranch, except for those areas that are irrelevant to agricultural operations, such as home lawns and driveways, and infrastructure elements for which no NRCS standard exists. All respondents supported the inclusion of non-cropped areas, such as riparian zones, turn rows, feedlots, buildings, and related facilities. One-fifth of the respondents recommended including all areas of a farm or ranch, including non-cropped areas, as eligible land, except for buildings, equipment storage facilities, and similar parts of farm and ranch infrastructure.

In Section 1469.5(b), NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use within the land area for purposes of calculating base payments. For Tier III contracts, NRCS proposes to require that participants treat to the quality criteria level all of their agricultural operation's land, including farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. This approach ensures that a Tier III participant's entire agriculture operation meets the quality criteria for the identified resource concerns and that its management is consistent with the NRCS planning process. The approach also ensures that Tier III operations will be model conservation enterprises.

NRCS is also proposing in Section 1469.5(b), for the purposes of CSP, that forestland offered for inclusion in a CSP contract as an incidental part of the agricultural operation must meet the following guidelines:

Forestland includes land that is at least stocked at least 10 percent by single stemmed forest trees of any size which will be at least 4 meters (13 feet) tall at maturity, and when viewed vertically, the tree canopy cover is 25 percent or greater for the offered conservation management unit. Also included in this definition are areas bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland, as determined by NRCS) and not currently developed for non-forest use. For classification as forestland, an area must be at least one acre and 100 feet wide. Therefore, in order for tree-covered grazing area to be eligible for a CSP contract, it must be stocked with less than 10 percent single stemmed trees of any size that will reach a mature height of at least 4 meters, and when viewed vertically, have a tree canopy cover of less than 25 percent—for the conservation management unit. NRCS is seeking comment on the usefulness of these guidelines for managing the questions relative to inclusion of incidental forested lands in CSP contracts.

Another issue that NRCS seeks guidance on is the question of what level of treatment should be required for the forestland that is included in the CSP contract as land incidental to the agricultural operation. NRCS is seeking input on whether forestland should meet the NRCS quality criteria requirements as specified in its technical guides for areas within a Tier III contract, but not eligible for payment.

*7. Base payments.* In Section 1238C(b)(1)(A), the Act requires the Secretary to make base payments as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. NRCS received 85 comments regarding the base payment calculation, and the majority of respondents rejected using national rental rates for calculating base payments. All respondents preferred a calculation that used local data, although there was no consensus on which specific local data NRCS should use. Suggestions included land values, cash rents, soil type, land use, and crop productivity. Section 1469.23(a) in the Summary of Provisions and Additional Request for Comments describes how these comments were addressed.

The Act requires the use of rental rates for the 2001 program year. NRCS proposes the use of regional and local data, plus "control data" procedures to ensure consistency and regional equity. The average 2001 rental rate for the base payments will be based on National

Agricultural Statistics Service (NASS) data from the regional or smaller level, where available, and other data such as other USDA program rental rates will be referenced, for quality control and consistency checks. When rates within a State vary widely, NRCS will use local data to set the average rental rate.

*8. Enhancement payments.* The Act provides for an enhancement payment if an owner or operator does one or more of the following: (a) Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhancement payments are meant to ensure and optimize environmental benefits. NRCS sought comments regarding the calculation and determination of program enhancement payments to ensure the program's statutory objectives are met. NRCS received 106 comments, but there was little consensus among respondents on this issue. Generally, people want enhancement payments to improve resource conditions and conservation performance: 8 respondents want enhancement payments tied to some actual measure of conservation performance; 14 suggested that enhancement payments be tied to State and local priorities or to a watershed, regional, or other landscape-type plan; 8 want State technical committees to set the schedule for enhancement payments; 8 others want the payments based on the cost of a practice or the time spent implementing a practice; 5 wanted a specific schedule of payments set up for such actions as the implementation of certain conservation systems or for research, demonstration, and monitoring; and 6 proposed not making enhancement payments. Some tied enhancements to a percentage of the base payment made; others suggested a percentage of the overall CSP payment. Section 1469.23(d) in the Summary of Provisions and Additional Request for Comments describes how these comments were addressed.

Section 1469.23 proposes that State Conservationists, with advice from the State Technical Committee and local work groups, will determine the list of activities that qualify for enhancement payments. The activities must reflect national priorities and be consistent with the rule. Cost schedules for enhancement activities would be determined at the local level. This

approach customizes payments at the State level and allows States to encourage activities they believe would yield the most environmental benefits. NRCS would not pay producers more than is necessary to carry out the enhancement activity. NRCS seeks additional comments on the construction and calculation of enhancement payments.

*9. Contract limits.* The Act does not limit the number of contracts a participant can have, nor does it provide for an overall program payment limitation per producer. Considering that program funds may be limited, NRCS sought public comment regarding whether limitations should be addressed in the regulation. NRCS received 419 comments on this issue, nearly all respondents favored the contract payment limits set in the Act and most of the respondents registered support for a one-producer, one contract approach. A few left some leeway to go to more contracts or even higher payment limits if the program were implemented as an entitlement. NRCS is seeking additional comments on the idea of a one-producer, one-contract approach brought up by the respondents.

Seven respondents expressed support for a Farm Service Agency farm-number system approach; 13 supported no limits on contracts or payments; 36 supported no limits on contracts, but a limit on payments at the \$45,000 level. A small number of respondents commented that the limit should be raised to \$50,000.

Six respondents did not want to be classified as an entity because of the perception that the Adjusted Gross Income (AGI) limitation would apply to Indian Tribes. Under 7 CFR 1400, Indian Tribes are exempt from the AGI qualifications.

NRCS determined to use the contract limits provided in the Act and not to limit the number of contracts held by any participant. However, NRCS's definition of an agricultural operation encourages producers to submit a single contract for all eligible land, rather than separate contracts, to the extent such land represents a cohesive management unit.

*10. Fair treatment of tenants.* In Section 1238C(d), the Act requires that the Secretary provide adequate safeguards to protect the interests of tenants and sharecroppers. Section 1238C(b)(2)(D) provides that to be eligible for payment the individual or entity make contributions to the operation that are commensurate to his share of the proceeds of the operation. NRCS sought public comment to ensure

payments are shared between owners and operators on a fair and equitable basis. NRCS received 72 comments on this issue. Respondents raised concerns about the impact of CSP provisions on owner/operator relationships, including changes in rental rates or changes in operators. Eleven respondents supported splitting payments on the basis of how commodity program payments are split in a general locale; 22 supported letting landowners and operators negotiate the split; 17 suggested splitting payments on the basis of the monetary investment made and work performed to implement a Conservation security plan; 7 supported making all payments to landowners only; 3 supported making all payments to tenants on the assumption that tenants are doing most of the work and making most of the financial investment; and 8 supported using EQIP, or some other existing program model, to resolve this issue. Generally, the comments favored letting the parties on the ground deal with this issue rather than have USDA determine the outcome.

NRCS has determined that tenants and landowners will receive appropriate payment shares based on their contributions to the conservation management and land stewardship as determined by them. Before NRCS will approve a contract, tenants and owners must agree to their interest in the payments for both parties as documented in the program contract.

**11. Ownership and Control.** The Act requires a minimum contract length of 5 years. Many landlord-tenant relationships are of a shorter duration. NRCS sought comments about whether eligible participants need to have control of the land for the contract period. NRCS received 80 comments, with respondents divided over the question of requiring control of the land for the length of the CSP contract (e.g., 5 years). Thirty-five respondents supported requiring applicants have control, or reasonable assurance of control for the life of the CSP contract. However, of these, 15 would allow the contract to be modified, cancelled, or have a succession of interest clause added. Six respondents specified the landowner should be the main applicant. Thirty-four respondents did not support a requirement for CSP applicants to have control of the land for the life of a CSP contract. This group desired the program to be more flexible to allow all tenants with short-term leases access to the program. Eight others recommended that CSP contract lengths vary with the lease arrangement.

Consistent with EQIP, NRCS proposes that the applicant must show control of the land for the length of the contract period either through a lease or proof of a long-standing relationship. Recognizing the frequent turnover of rented land in some parts of the country, it may be difficult to have a stable land base to satisfy this contract requirement. If the applicant cannot show control of a parcel of the agricultural operation for the life of the contract, that part of the agricultural operation does not qualify for any payment component. However, it is required to be maintained at the same conservation standard as the rest of the operation, and the land is considered within the area of the contract. Situations that result in noncompliance with requirements of the contract will be handled as a contract violation according to Section 1469.25.

**12. Program focus and prioritization.** In order to meet the Administration's goals to maximize the conservation and improvement of natural resources, NRCS believes it is necessary to prioritize assistance offered through CSP. Since the law does not provide for a funding or acreage cap, NRCS sought comments on ways to focus the program. A number of suggestions were offered to the public on ways the program could be limited.

NRCS received 568 comments on this issue, with 493 considered "form" responses. Commentators overwhelmingly supported the entitlement status of the CSP and the program being made available to producers nationwide. There was strong support, secondarily, for prioritizing applications based on the CSP tier arrangement with Tier III contracts given preference. There appeared to be mixed reaction to how allocations should be made to the State and/or local level. There was more support to allocate funds using a formula based upon measurable environmental need, rather than other options NRCS considered, including: limiting the application process to only the projects with the highest conservation potential; conducting a random lottery-like process for participation; limiting the program to specific geographic areas or a certain number of States; conducting a national or State level request for proposal process; or limiting sign-up to one national or State identified natural resource concern.

NRCS has addressed the constraint of program funding by defining eligibility criteria that limit program participation, and establishing a system of conservation enrollment categories that would enable the Secretary to prioritize

funding to eligible applicants consistent with sign-up funding allocation. NRCS is proposing to use watersheds as the mechanism for focusing CSP participation in high-priority areas of the country. Watersheds could be selected to focus on national and region-level environmental quality concerns. NRCS would nationally rank watersheds based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Applicants would be placed in a particular enrollment category based on their level of conservation commitment and other factors to be announced during sign-up. All applicants who meet CSP eligibility criteria and are placed in a category selected for funding in the sign-up would receive a payment consistent with their contracts. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice.

**13. Energy as a natural resource concern.** The Act identifies energy as a resource concern in Section 1238A(a). NRCS does not presently have quality criteria standards for energy to analyze of the effect of the planned conservation activities. NRCS sought comments on how energy could be incorporated into the program requirements. Although 103 comments were received, no comments offered specific approaches for implementing this provision. Most respondents did not address the questions asked in the Advanced Notice of Proposed Rulemaking. However, 62 supported including energy as a resource concern in the program. One respondent noted that energy conservation was a clear objective of the CSP, but recommended that it did not warrant designation as a separate resource of concern, with the subsequent development of a set of quality criteria similar to those for soil, water, air, plants, and animals. This commentator suggested that energy conservation be addressed under the umbrella of one of the existing primary resources of concern. Four others recommended waiting for more funding before including energy as a resource concern, and 36 had other general energy-related comments.

There are virtually dozens of opportunities to impact energy as a resource through the adoption of conservation practices and systems and by applying intensive management activities. Agricultural operations can impact energy use efficiency directly by reductions in fuel use during planting, harvesting cycles, and pumping irrigation water, or indirectly through reductions in fertilizer and pesticide applications. For example,

implementing a no-till residue management system can save significant amounts of fuel that otherwise is consumed by equipment traveling across the field. Irrigation water management can reduce consumption of fuel or electricity used for pumping, as well as the quantity of water applied.

NRCS proposes to address energy in the following ways: (1) allow State and local priorities to make energy conservation activities eligible for enhancement payments; and (2) revise or develop energy-related practice standards in the FOTG (e.g. biomass production, wind energy generation, etc.). NRCS will ensure that the FOTG contains conservation practices that address energy production, energy conservation and energy efficiency. NRCS wants to encourage innovation and involvement of the State Technical Committee and local work group. This proposed rule enables NRCS to adopt either or both of these options.

**14. Management payments.** The Act authorizes payments for conservation practices that require planning, implementation, management, and maintenance. NRCS considered whether the management payment should more heavily recognize a participant's equity in capital or a participant's engagement in intensive management, and we received 87 comments on the issue.

Ten respondents addressed the tension between the return to management versus the return to capital. Generally, the respondents said the bulk of the CSP management payment should recognize the time and cost of applying management skills. Three stated that this issue should be resolved between the landowner and the tenant. Another respondent suggested that the return to capital was the preservation and enhancement of land productivity. Nearly all respondents recommended CSP help compensate producers for their time and management skills in implementing management intensive practices. A third of all respondents recommended paying only for land management practices. A few respondents recommended paying only for the return on equity in capital improvements. In the "Summary of Provisions and Additional Request for Comments" Section 1469.23, Program Payments describes how these comments were addressed.

**15. Quality assurance.** The Act provides limited guidance to NRCS regarding how the program's performance should be monitored or how NRCS should identify contract violations. NRCS sought public input on how to ensure that Federal funds are spent wisely, and NRCS received 105

comments. In general, respondents felt strongly that USDA should monitor contract compliance. They pointed out the need for spot-checks, self-certification, and enforcement activities to ensure program performance. However, respondents did not agree on a preferred frequency of the checks or which person(s) should be responsible for carrying out the contract compliance activities.

Respondents offered some useful ideas on how to measure and monitor program performance. For example, some commentators suggested the use of a combination of reference sites, scientific models, and GIS technology to carry out monitoring and evaluation. Monitoring could occur at the farm and ranch level, as well as at the watershed level or some other geographic area.

Specific monitoring and compliance approaches are not laid out in this proposed rule.

#### *Summary of Provisions and Additional Requests for Comments*

The following discussion summarizes the provisions in each section of the proposed rule, explains the alternatives NRCS considered, justifies the NRCS preferred approach, and requests public comment on specific issues.

#### *Section 1469.1 Applicability*

The rule identifies the initial program year and extent of the program's availability. NRCS has the authority to begin accepting applications during calendar year 2003.

#### *Section 1469.2 Administration*

This section provides that the CSP will be administered by the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation. It also provides general information on program administration.

As discussed above, one important aspect of CSP administration is the procedures NRCS will follow if NRCS receives more eligible applications than it can fund.

As noted above, NRCS is specifically seeking comment on how to select the contracts of the pool of eligible producers to best serve the purpose of the program.

#### *Section 1469.3 Definitions*

This section sets forth definitions for terms used throughout the part. Most definitions are derived from the statute, NRCS technical guidance documents, or regulations for other programs. This rule provides important clarity, particularly where the Act lacks specificity.

The most significant definition is "agricultural operation," because the

term defines the land area that can or must be enrolled in CSP contracts under the three tiers of participation. NRCS believes its preferred approach to defining an agricultural operation will help create a cohesive conservation unit over which the stewardship benefits are achieved. In particular, the definition is instrumental in separating Tier I from Tier II and Tier III applicants. The term "agricultural operation" is used twice in Title II of the Act with different meanings. This definition here is not the same as the term used in the EQIP Ground and Surface Water Conservation program which refers only to specific fields under irrigation used to calculate a net savings for water conservation purposes. CSP definition covers the entire agricultural operation whether irrigated or not and is used as a tier criteria rather than to calculate a net savings for water conservation purposes.

NRCS's approach to defining agricultural operation for the CSP represents a careful balance. If the definition were to allow a producer to reconstitute or split holdings, the producer could submit numerous CSP applications for what is really a cohesive production unit. If the definition were to be overly broad, a producer's legitimately unique operations would be inappropriately encompassed into one "agricultural operation."

NRCS evaluated whether the agricultural operation should be: a unique owner/operator relationship; all land in a county or contiguous land in which the client provides active personal management of the operation; historical administrative designations; or defined by the participant.

In particular, NRCS compared the Farm Service Agency (FSA) numbering system to the approach NRCS uses in the Great Plains Conservation Program (GPCP). Whereas FSA's system bases farm numbers and the associated land on its administration of commodity programs, NRCS believes that agricultural operations under CSP should be based on resource concerns or conservation management. Moreover, the FSA numbering system does not apply to many potential CSP participants who do not participate in commodity programs, such as ranchers and specialty crop producers. NRCS has found that the definition of "agricultural operation" in the GPCP to be satisfactory for administering the program and easy for participants to understand.

Consistent with GPCP, NRCS proposes in Section 1469.3 to define "agricultural operation" as "all agricultural land, and other lands

determined by the Chief, NRCS, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation." NRCS believes that this proposed definition meets the intent of the legislation. It is clear, better promotes operation-wide conservation, and could reduce the number of contracts in which a participant can engage. Active personal management as defined in the rule ensures the participant personally provides day-to-day conservation management decisions essential to provide the intensity of management necessary to achieve the goals of the program. NRCS believes that the value of making conservation management decisions based on resources concerns is more important than fitting CSP to the design of existing commodity programs. This definition supports the many respondents who desired a program that actually benefits those who work the land.

For this rule, the Secretary has determined that the minimum level of treatment required to address resource concerns for CSP program eligibility will meet, and in most cases exceed, the quality criteria standard in order to optimize the level of environmental benefits and environmental program performance. The term non-degradation standard is defined in the statute, but is not used in the proposed rule. Non-degradation standard as used in the CSP statute means the level of treatment measures required to adequately protect, and prevent degradation of, one or more natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the Natural Resources Conservation Service. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by the Environmental Protection Agency and other regulatory agencies.

Benchmark condition inventory is the documentation of the resource condition or situation pursuant to Section 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities, to determine program eligibility, to design a conservation security contract, and to measure the change in resource conditions resulting from conservation treatment. This is a common part of the NRCS conservation planning process.

Management intensity is the degree and scope of actions or activities taken by a producer, which are beyond the minimum requirements of a management practice and which qualify

as additional effort necessary to receive an enhancement payment. Management intensity covers a broad range of conventional and emerging technologies that take advantage of new developments in soil, water, nutrient, and pest management. These conservation technologies provide a basis for implementation of CSP enhancement payments. Management activities can create powerful opportunities for producers to achieve increased levels of environmental performance and benefits.

Resource concern refers to the condition of natural resources that may be sensitive to change by natural forces or human activity. NRCS identifies problems and opportunities relating to resource concerns by using predictive models, direct measurement, or observations in relation to client objectives. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

#### *Section 1469.4 Significant Resource Concerns*

This section proposes water quality and soil quality as nationally significant resource concerns that will be addressed in all contracts and allows the Chief to designate additional nationally significant resource concerns for a given sign-up. NRCS is specifically seeking comment on the designation of nationally significant resource concerns.

NRCS evaluated whether significant resource concerns should be designated at the national, State, or local level and, if determined nationally, what those specific resource concerns should be. In Section 1469.4, NRCS is proposing water quality and soil quality as national significant resource concerns. Resource concerns and quality criteria for their sustained use rely on the existing NRCS technical guides and conservation planning guidance and policies. Even though not all operations have problems to solve in the area of water quality and soil quality, most do have opportunities to improve the condition of the resource through more intensive management of typical soil quality or water quality conservation activities such as conservation tillage, nutrient management, grazing management, and wildlife habitat management. Operations that have already treated soil and water quality to the minimum level of treatment could increase the management intensity

applicable to those resource concerns through enhancement activities. This rule proposes that every contract address national priority resource concerns. At the announcement of sign-up, the Chief may designate additional resource concerns of national significance. Additionally, State and local concerns would be addressed through the enhancement activities undertaken by CSP participants.

NRCS is emphasizing water quality and soil quality because it believes such emphasis will deliver the greatest net resource benefits from the program, as noted in the above discussion. In addition, NRCS has a long history of developing and applying sound science and technologies that effectively address water quality and soil quality problems and conservation opportunities.

#### *Section 1469.5 Eligibility Requirements and Selection and Funding of Priority Watersheds*

This section provides the requirements for participant and land eligibility, outlines the requirements for the three tiers of CSP participation and proposes the selection for funding of priority watersheds.

Eligible land is private or Tribal working lands (cropland, orchards and vineyards, pasture, or rangeland) that is in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12. Land is placed in general use categories for the purpose of calculating the base payment and identification of appropriate natural resource concerns and treatment needs, such as cropland, pasture, and rangeland. Decisions about the proper use and management of the resources that support agricultural operations are made on a daily basis. In some instances a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive land use. For example, a dairy operation that is using cropland used to grow forages may convert to a rotational grazing system. This reduction in land use intensity has many environmental benefits associated with it. This land use conversion also changes the base payment basis from a cropland (higher) payment per acre rate to a pasture (lower) payment per acre. NRCS is asking for comment on how this situation can be addressed in the rule.

The applicant must have an interest in the farming operation as defined in 7 CFR 1400.3 and must have control of the land for the life of the proposed contract period. Where the land owner does not have control of the land for the life of the CSP contract, such as where

continuity of the agricultural operation fluctuates from year to year or where leases are not maintained, NRCS proposes that the participant practice the same level of conservation treatment on all land under their control on a year to year basis even though they may not have control on each parcel for the life of the CSP contract. Concerns have been expressed through the ANPR process that producers not accept stewardship payments while at the same time operating land outside the CSP contract at a less-than-acceptable level of treatment. NRCS is seeking comments on this provision.

NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use in the land area, for purposes of calculating base payments.

The Secretary is authorized to set eligibility criteria and contract requirements. The proposed rule sets the required level of treatment to address resource concerns that each applicant must meet for program eligibility, according to NRCS technical guides, and allows the Chief to designate additional, specific eligibility requirements or activities that will be required for inclusion in a CSP contract for a given sign-up. Such requirements might be additional enhancements such as wildlife habitat or air quality activities.

Many who commented on the ANPR desired to make CSP supportive for those who actually work the land. Thus, there was strong support to allow contract modifications without penalties, to allow succession of interest clauses in the contract and for not requiring participants to control the land for 5 years.

NRCS recommends that contract modifications and succession of interest clauses be allowed in the contract without penalties. This section additionally proposes that participants must have control of the land for the contract period. NRCS believes that this approach would reduce the administrative burden on NRCS, reduce client paperwork, and increase the likelihood that the environmental benefits the participants achieve will endure. For the CSP contract, the participant will certify that they have control of the land for the contract period and will provide appropriate evidence, as determined by NRCS.

To be eligible for CSP, a producer must be applying a level of conservation treatment that meets or exceeds the minimum requirements. Producers who have historically met or exceeded the requirements, in some cases, may have endured a flood, fire, or other event that

has either destroyed or damaged practices that would have made them eligible for CSP. NRCS is seeking comment on whether there should be any special dispensation or consideration given for this situation.

NRCS is proposing to use watersheds as a mechanism for focusing CSP participation. NRCS would nationally rank watersheds to focus on conservation and environmental quality concerns based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice. Once the highest ranked watershed's applications were funded, the next watershed would be funded, etc. Funding would be distributed to each priority watershed to fund sub-categories until it was exhausted. NRCS is seeking comment on how each watershed would be funded.

NRCS is proposing that the majority of the agricultural operation is to be located within a selected priority watershed. Additionally, the following Tier specific requirements must be met:

(i) Tier I—"The applicant must have adequately addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on part of the agricultural operation.

(ii) Tier II—"The applicant must have adequately addressed the nationally significant resource concerns of Soil Quality and Water Quality to the minimum level of treatment on the entire agricultural operation.

(iii) Tier III—"The applicant must have adequately addressed all of the resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation. For Tier III contracts, NRCS proposes to require that participants treat, to the quality criteria level, all of their operation's land, including farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. This approach ensures that a Tier III participant's entire agriculture operation meets the quality criteria for all identified resource concerns and that its management is consistent with the NRCS technical guides. The approach also ensures that the program addresses more resources per Federal dollar expended, and that Tier III operations will be model conservation enterprises.

As a contract requirement, the participant will be required to do

additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement. NRCS is seeking comment on these minimum eligibility and contract requirements. NRCS is also seeking comments on the utility of a self screening tool (both Web-based and hardcopy) to assist producers in determining if they should consider application to CSP. Should this self screening tool be a regulatory requirement and described in the proposed rule?

#### *Section 1469.6 Enrollment Categories*

Given the unusual nature of a capped entitlement program, NRCS looked for precedents in other Federal programs. One such program, a health care benefit, Enrollment "Provision of Hospital and Outreach Care to Veterans, is implemented by the Department of Veterans Affairs (38 CFR part 17), which was used to pattern much of this discussion.

In managing the provisions of this part, the Secretary shall establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion and remain within the statutory budget caps. The enrollment categories are intended to identify and prioritize eligible producers within the selected watersheds for funding. Applicants would be eligible to be enrolled based on science-based, data supported, priority categories consistent with historic conservation performance established prior to the announcement of a sign-up. NRCS will develop criteria for construction of the enrollment categories, such as soil condition index, soil and water quality conservation practices and systems, and grazing land condition, and publish them for comment in the **Federal Register**. Categories will be based on the following principles:

(i) Categories will serve to sustain past environmental gains for nationally significant resource concerns consistent with the producer's historic conservation performance.

(ii) Category criteria will be sharply defined and science-based.

(iii) Categories will use natural resource, demographic, and other data sources to support the participation assumptions for each category.

(iv) The highest priority categories will require additional conservation treatment or enhancement activities to achieve the additional program benefits, and

(v) Categories will accommodate the adoption of new and emerging technologies.

Sub-categories may be established within the categories. All applications which meet the sign-up criteria will be placed in an enrollment category regardless of available funding. An application will be placed in the highest priority enrollment category or categories for which the application qualifies. Categories will be funded in priority order until the available funds are exhausted.

NRCS would fund as many categories as possible. If the last category cannot be fully funded, NRCS would fund producers within the category in order of the subcategories. NRCS is proposing to fund as many subcategories within the last category to be funded as possible. Additionally, NRCS is seeking comments on whether the remaining subcategories should be offered pro-rated payments, or not funded at all. Pro-rating payments raises a number of practical difficulties. NRCS is seeking comments on whether it should partially fund applications, or whether only those categories and subcategories that could be fully funded would be offered a CSP contract.

Within each category, limited resource and beginning farmers would be placed at the highest subcategory for funding. Applicants would be placed at the highest subcategory for which they may qualify.

#### *Section 1469.7 Benchmark Condition Inventory and Conservation Security Plan*

This section proposes that the applicant will establish an inventory of the benchmark conditions to identify the resource conditions of the agriculture operation following the NRCS planning process. The applicant uses benchmark condition inventories for each land use to take a "snapshot" of their operation's resource conditions, conservation practices, treatment, and management, particularly upon the application for CSP. The benchmark condition inventory helps NRCS determine the appropriate tier(s) of participation and payment levels and forms the foundation for the Conservation Security Plan. For CSP, the development of a Conservation Security Plan will complement what NRCS typically addresses in a conservation plan. The NRCS National Planning Procedures Handbook contains information and guidance on conducting resource inventories, establishing the benchmark condition, resource treatment criteria, and the development of conservation plans and area-wide plans. Examples of the benchmark inventory and tools to construct the inventory will be posted

on the NRCS Web site and be available in local USDA Service Centers.

This section also identifies the content of the Conservation Security Plan. The plan document provided to the client must be a quality document containing meaningful information for the client. It should include the following items:

- (1) Identification of the resource concerns currently being addressed;
- (2) The schedule for completion of additional contract requirements and associated payments;
- (3) A soil map with appropriate interpretations, such as land capability groupings, woodland suitability groups, pasture and hayland suitability groups, and other interpretive information regarding suitability for specific land uses;
- (4) Appropriate worksheets developed with the client. The worksheets should include such things as resource inventories of the benchmark condition, forage inventories, erosion estimates, and cost estimates;
- (5) Available job sheets and other prepared material applicable to the client's specific planned practices;
- (6) Operation and maintenance agreements and procedures;
- (7) Drawings, specifications and designs, as appropriate;
- (8) A conservation plan map that indicates the boundaries, acreage and land use of the property to be included on the CSP contract. Examples of acceptable acreage calculations include:
  - Program acres from FSA.
  - Geographic information system calculations.
  - Global positioning system.
  - Land survey/plat map.
  - Measurements taken from scaled maps or photographs.
- (9) Basis of the Tier determination;
- (10) Conservation practices required to be implemented, maintained, or improved; and
- (11) Other activities or actions that have been or will be taken.

To the extent possible, existing case file information will be used as supporting documentation.

The participant and NRCS may modify the Conservation Security Plan during the life of the contract to reflect the participant's intent to address additional natural resource concerns or to increase the tier of participation. Also, as a participant undertakes new practices, it will allow them to achieve higher levels of stewardship.

#### *Section 1469.8 Conservation Practices*

CSP emphasizes conservation and the improvement of quality of the soil, water, air, energy, plant and animal life

by addressing natural resource conditions, rather than using a prescriptive list of conservation practices and activities. NRCS will identify a suite of practices, treatments, and activities within practices that a participant can use to mitigate or prevent a resource problem or to produce environmental benefits, such as carbon sequestration. Although NRCS technical guides contain common suites of practices and treatments that address specific problems, NRCS will select specific practices available in a local area for CSP contracts based on site-specific conditions, tailoring them to the land characteristics and the producer's management objectives.

Some ANPR commenters noted a possible redundancy between CSP and other programs (such as EQIP and WHIP) that include cost-share payments for installing structural practices. Producers may use EQIP, WHIP, or other cost-share programs to install practices prior to applying for CSP. NRCS is proposing to utilize the new practice component of CSP to provide cost-share when practices are needed although at a lower cost share than other USDA programs, to minimize redundancy between CSP and other existing USDA conservation programs. Additionally, NRCS believes this optimizes the conservation and improvement of natural resources by utilizing the full portfolio of USDA conservation programs. NRCS seeks comment on whether this approach will encourage participants to install practices through other programs in order to become eligible for CSP.

NRCS is proposing to limit the number of practices offered for the existing practice and one-time new practice payments as discussed in Section 1469.23(c). Additionally NRCS proposes that consistent with EQIP, CSP will not make one-time new practice payments for a conservation practice applied prior to the CSP application, or payments for a one-time new practice installation that was implemented or initiated prior to approval of the contract, unless a waiver was granted by the State Conservationist prior to the installation of the practice. NRCS proposes to post the list of eligible practices before sign-up.

#### *Section 1469.9 Technical Assistance*

This section describes tasks needed to: (1) Conduct the sign-up and application process; (2) conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (3) training, certification, and quality assurance of professional

conservationists; and (4) evaluation and assessment of the producer's operation and maintenance needs. NRCS is proposing that, consistent with NRCS's planning procedures policy, that Conservation Security Plans will be completed by certified conservation planners. This description is consistent with technical assistance requirements for other NRCS programs. NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers.

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

##### *Section 1469.20 Application for Contracts and Their Selection*

This section provides information on the sign-up announcement, application, and selection processes. The sign-up announcements will specify additional program eligibility and contract requirements, if applicable, and information about other requirements that would be required. NRCS intends to direct each sign-up towards producers in specific watersheds that have priority environmental concerns. Only producers in the areas identified through the sign-up announcement could apply for CSP funding. Additionally, NRCS would supply information about:

1. Priority order of enrollment categories that could be funded during the sign-up;
2. Expected number of contracts NRCS expects to be able to provide;
3. Cost schedules and a list of eligible existing and new conservation practices that can receive CSP payments as enhancement or to fulfill contract requirements;
4. Any additional nationally significant resource concerns that would need to be addressed for eligibility; and
5. Schedule for applications submission and other important deadlines.

##### *Section 1469.21 Contract Requirements*

This section provides specific contract terms, including contract duration, statutory requirements, consequences of failing to fulfill the terms of the contract, information requirements, schedule of payments, the contract expiration date, and the Agency's ability to incorporate other provisions determined necessary by the Agency to satisfy the objectives of the program.

The participant agrees in the contract to maintain at least the level of stewardship identified in the benchmark condition inventory for the entire contract period, as appropriate,

and implement and maintain any new treatments required in the contract. Additionally, as a contract requirement, the participant will be required to complete additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement.

NRCS is proposing that CSP participants must address the following to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contracts would require that in addition to the nationally significant resource concerns, additional requirements as required in the enrollment categories or sign-up announcement must be addressed over the contract acreage unless stipulated that they must be in place at the time of application;

(2) Tier II contracts would require a significant resource concern, as described in Section III of the NRCS FOTG, other than the nationally significant resource concerns, to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(3) Tier III contracts would require additional requirements as required in the enrollment categories or sign-up announcement as selected by the applicant and approved by NRCS, over the entire agricultural operation.

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

NRCS is proposing a mechanism for a participant to transition to a higher tier of participation and is seeking comment on this proposal. In the event that such a transition initiates with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon the transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all base, existing practice, new practice one time payments, and enhancement payments using the applicable enrolled acreage at the time of the payment as planned in the contract schedule.

NRCS is proposing that as the tier transition occurs, that the contract be at the next tier for a period of no less than 18 months to ensure that the practices are functional and are being managed as an integral part of the agricultural operation.

The CSP contract may be adjusted by NRCS, and the participant, if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation. If the participant cannot fulfill his CSP contract commitment, the contract calls for the participant to refund any CSP payments received with interest, and forfeit any future payments under CSP. NRCS is interested in comments on this and other concerns that the public might have on noncompliance with the CSP contract requirements.

NRCS will select certain practices that are needed to address significant resource concerns during the conservation security contract for one-time cost share payments. NRCS will also pay for certain practices needed to maintain the minimum level of treatment of significant resource concerns. NRCS may not pay for all practices needed to address the significant resource concerns on an agricultural operation.

##### *Section 1469.22 Conservation Practice, Operation, and Maintenance*

This section provides the participant responsibilities for updating and maintaining practices and contract activities and the duration of such responsibilities, as well as NRCS potential for periodic review.

##### *Section 1469.23 Program Payments*

This section provides information on how payments are calculated and potential program payment rates under the various program tiers.

CSP payments rise with increasing levels of conservation treatment within each tier and as tier levels increase. NRCS is proposing that CSP contract payments include one or more of the following components:

- (1) An annual base component for the benchmark conservation treatment;
- (2) An annual existing practice component for maintaining existing approved conservation practices;

(3) A one-time new practice component for additional approved practices; and

(4) An enhancement component for exceptional conservation effort and additional conservation practices or activities that provide increased resource benefits beyond the minimum level.

Each participant must fulfill all contract requirements in order to receive any payment. For example, a participant cannot decide, mid-contract, to cease enhancement activities and still continue to receive base and existing practice payments.

The Act requires NRCS to set appropriate rates for the base components of CSP payments using data from the 2001 program year in section 1469.23(a). NRCS proposes using regional and local data with adjustments to ensure consistency and regional equity. NRCS will first calculate the average 2001 rental rates using National Agriculture Statistics Service (NASS) regional data (or more local-level NASS data where available). Regional NASS data can help NRCS set rates that could apply within the State.

Where typical rental rates for a given land use vary widely within a State, NRCS will use local data to adjust the average county-level rates, then use a discounting procedure to set the final rate at a percentage of that average rate. Consistent local data are not readily available for all areas for all land uses, but NRCS will use the available data to determine reasonable local rates where feasible. The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

Once local average 2001 rental rates for each land use category are established, NRCS will then multiply those average rental rates by a consistent reduction factor to compute the final base rates. The results of the CSP proposed rule economic analysis indicated that, with all other payments held constant, the lower the reduction factor used on regional land rental rates, the less effect the base payment has on the overall producer payment. This results in more net environmental benefits accruing to the program. NRCS proposes the reduction factor to be 0.1, meaning that the final base rates will be 10 percent of the local average rental rates. NRCS believes this discounting approach will help:

- Minimize the effect of the base payment on land rental rates, land values and commodity prices
- Maximize participation in the program
- Focus funds toward increased environmental performance through additional practices and enhancements payments
- Maximize environmental benefits and reduce program costs
- Continue to provide the participant with fair and equitable compensation for the social benefits derived from the contract.

NRCS is seeking comment on whether the reduction factor should be fixed or variable over the life of the program, with the 0.1 factor being the upper limit.

The proposed rule sets base components of CSP payments to no more than 25 percent of the contract cap

in Tier I and no more than 30 percent of the contract cap in Tier II and III.

Section 1469.23(b) and (c) describes how the Chief will determine and announce the practices eligible for new and existing payments based on the highest net benefits. NRCS proposes to limit the number of both new and existing practice payments to a short high priority list. State Conservationists will have an opportunity to tailor the list to meet the needs of local and State conditions. NRCS proposes to limit the new and existing practice payments to well below the statutory cap of 75 percent by setting a fixed rate for practices by county. By limiting practice payments, the opportunity exists to maximize the potential for enhancement payments. Although the Act allows higher levels of maintenance payments, NRCS believes that this proposal encourages all participants to adopt a higher level of conservation and to participate in locally led conservation efforts, record keeping and demonstration projects. Setting a fixed rate for existing practice payments will reduce the administrative burden for participants and local offices by avoiding the calculation of maintenance payments on individual practices, collecting receipts, and an overall reduction in paperwork associated with the program. In addition, having a fixed rate will avoid the uncertainty about developing consistent and uniform costs across State and county lines and the perplexity of calculating reasonable costs for routine maintenance activities can be avoided entirely.

NRCS proposes in Section 1469.23 that the program will pay for the land management practices that have a high potential to improve the conditions of the resources of concern, and that are determined to increase conservation benefits as determined by the State Conservationist, with advice from the State Technical Committee and local work group and that actions and activities that increase the management intensity above the quality criteria level be identified and paid as an enhancement activity.

Section 1469.23(d) proposes that State Conservationists, with advice from the State Technical Committee and local work groups, will determine the list of activities that qualify for enhancement payments and how the payments will be calculated. This approach customizes payments at the State level, and allows such leaders to focus and encourage activities they determine are important.

NRCS is proposing utilizing the enhancement component of a CSP payment to increase conservation performance regardless of tier of

participation (including activities related to energy conservation) as a result of additional effort. The statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

(1) The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements in Section 1469.5. For example, activities that increase the performance of management practices (management intensity) that contribute to additional improvement to the condition of the resources, provide for more efficient resource utilization and energy conservation;

(2) An improvement in a priority local resource condition, as determined by NRCS. For example, addressing water quality and wildlife concerns by the installation of riparian forest buffers to provide shade and cool surface water temperatures to restore critical habitat for salmon;

(3) Participation in an on-farm conservation research, demonstration, or pilot project. For example, conducting field trials with cover crops, mulches, land management practices to control cropland and stream bank erosion;

(4) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area. For example, carrying out land management practices specifically called for in a watershed plan that control erosion and sedimentation, improve soil organic matter levels, reduce surface water contamination, and improve the condition of related resources; or

(5) Carries out assessment and evaluation activities relating to practices included in the Conservation Security Plan, such as water quality sampling at field edges, drilling monitoring wells, and gathering plant samples for analysis.

NRCS believes that, depending on local needs and concerns and availability of resources, different enhancement activities may be appropriate for different locations. For example, some watersheds may be covered by a conservation plan that involves most producers, whereas others may not. Additionally, implementing more conservation practices would yield environmental benefits only if those practices are appropriately tailored to address resource concerns on the agricultural operation. Finally, evaluation and assessment activities would likely provide more useful data if they are

conducted as part of a scientifically sound research plan. NRCS is seeking comments on which assessment and evaluation projects would most benefit from the involvement of CSP participants and would be most useful for program evaluation.

To ensure that enhancement activities would provide the most value to the CSP participant and the public, NRCS proposes that State Conservationists, with concurrence by the Chief, will determine which enhancement activities would be available locally, given local priority natural resource concerns, eligible assessment and evaluation research projects, existing watershed or regional resource conservation plans, and other considerations. NRCS will make a list of such activities available to the public.

CSP applicants would select from the list of available enhancement for their location. While choosing to undertake enhancement activities is solely within the producers' discretion, NRCS may provide priority funding to producers who agree to undertake those enhancement activities NRCS believes would provide substantial environmental or programmatic benefits. Accordingly, NRCS is proposing to place such producers at a higher enrollment category consistent with the sign-up announcement.

Section 1469.23(d) proposes that State Conservationists, with input from the State Technical Committee and Local Work Groups, would determine the payments level for each enhancement activity that would be offered locally, based on average county costs of undertaking such activities. Projected environmental and programmatic benefits would be considered when establishing payment levels. Some management intensity activities do not impose a clear cost on the producers. For example, applying fertilizer in the Spring rather than in the Fall may not impose an additional cost in terms of labor or materials. NRCS is seeking comments on how to determine the appropriate payment rates for those types of enhancement activities where the payment is intended to encourage producers to change their mode of operation, but not necessarily to offset additional or more expensive activities.

#### *Section 1469.24 Contract Modifications and Transfers of Land*

This section provides provisions for modifying contracts.

#### *Section 1469.25 Contract Violations and Termination*

This section provides provisions when participants fail to fulfill the

terms of the contract. This regulation provides the NRCS State Conservationist the authority to determine the appropriate action based on the specific situations of the violation.

### **Subpart C—General Administration**

#### *Section 1469.30 Fair Treatment of Tenants and Sharecroppers*

This section allows tenants and landowners to receive appropriate payment shares based on their contributions to the conservation management and land stewardship as determined by them. Before NRCS will approve a contract, tenants and owners must agree to their interest in the payments for both parties as documented in the program contract.

Sections 1469.31 through 1469.36 provides standard language used within other conservation program rules related to appeals, compliance with regulatory measures, access to agricultural operations, performance based upon the advice or action of representatives of CCC, offsets and assignments, misrepresentation, and scheme or device.

#### **List of Subjects in 7 CFR Part 1469**

Administrative practice and procedure, Agriculture, Environmental protection, Reporting and recordkeeping requirements, Soil conservation, Water pollution control.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended by adding a new part 1469 to read as follows:

### **PART 1469—CONSERVATION SECURITY PROGRAM**

#### **Subpart A—General Provisions**

Sec.

- 1469.1 Applicability.
- 1469.2 Administration.
- 1469.3 Definitions.
- 1469.4 Significant resource concerns.
- 1469.5 Eligibility requirements and selection and funding of priority watersheds.
- 1469.6 Enrollment categories.
- 1469.7 Benchmark condition inventory and conservation security plan.
- 1469.8 Conservation practices.
- 1469.9 Technical assistance.

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

- 1469.20 Application for contracts and their selection.
- 1469.21 Contract requirements.
- 1469.22 Conservation practice operation and maintenance.
- 1469.23 Program payments.
- 1469.24 Contract modifications and transfers of land.
- 1469.25 Contract violations and termination.

### **Subpart C—General Administration**

1469.30 Fair treatment of tenants and sharecroppers.

1469.31 Appeals.

1469.32 Compliance with regulatory measures.

1469.33 Access to agricultural operation.

1469.34 Performance based on advice or action of representatives of NRCS.

1469.35 Offsets and assignments.

1469.36 Misrepresentation and scheme or device.

**Authority:** 16 U.S.C. 3830 *et seq.*

### **Subpart A—General Provisions**

#### **§ 1469.1 Applicability.**

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2003 and thereafter.

(b) CSP is applicable on private or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Through the CSP the Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to owners and operators for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

#### **§ 1469.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the

development of State program technical policies, payment related matters, outreach efforts, and other program issues.

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

(f) For lands under the jurisdiction of a Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Tribal Nation and the Chief.

#### **§ 1469.3 Definitions.**

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

*Active personal management* means is personally providing that:

(1) The general supervision and direction of activities and labor involved in the farming operation; and

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation (examples are shown in 7 CFR 1400.3(b)).

*Agricultural land* means cropland, rangeland, pasture, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced.

*Agriculture operation* means all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation on the date of enrollment.

*Applicant* means an individual, entity, or joint operation that has an interest in a farming operation or produces food and fiber, as defined in 7 CFR 1400.3, who has requested in writing to participate in CSP.

*At-risk species* means any plant or animal species as determined by the State Technical Committee to need direct intervention to halt its population decline.

*Base component of CSP payments* means the CSP payment component as described in 1469.23(a).

*Beginning farmer or rancher* means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in (7 U.S.C. 1991(a)). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, 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.

(ii) In the case of a contract with an entity, 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.

*Benchmark condition inventory* means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities, to determine program eligibility, to design a conservation security contract, and to measure the change in resource conditions resulting from conservation treatment.

*Certified Conservation Planner* means a person who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting clients to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and leads the client to choose and implement an effective alternative that treats resource concerns and meets the client's objectives.

*Chief* means the Chief of NRCS, USDA or designee.

*Conservation district* means any district or unit of State or local government formed under State, territorial, or tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a 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," or similar name.

*Conservation practice* means a specified treatment, such as a structural or land management practice, that is

planned and applied according to NRCS standards and specifications.

*Conservation Reserve Program (CRP)* means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

*Conservation security contract* means a legal document that specifies the rights and obligations of any person who has been accepted for participation in CSP.

*Conservation Security Plan (CSP)* means the conservation planning document developed by the participant with assistance by NRCS or a technical service provider once the application is selected. The conservation security plan builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices or activities to be supported under the provisions of the conservation security contract.

*Conservation system* means a combination of conservation practices and resource management for the treatment of soil, water, air, plant, or animal resource concerns.

*Conservation treatment* means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

*Considered to be planted* means a long term rotation of alfalfa or multi-year grasses and legumes, summer fallow, typically cropped wet areas rotated to wildlife habitat, such as rice fields; or crops planted to provide an adequate seedbed for re-seeding.

*Cropland* means a land cover/use category that includes areas used for the production of adapted crops for harvest. Two subcategories of cropland are recognized: cultivated and noncultivated. Cultivated cropland comprises land in row crops or close-grown crops and also other cultivated cropland, for example, hayland or pastureland that is in a rotation with row or close-grown crops. Noncultivated cropland includes permanent hayland and horticultural cropland, including orchards and vineyards.

*Designated conservationist* means an NRCS employee whom the State conservationist has designated as responsible for administration of CSP in a specific area.

*Enhancement component of a CSP payment* means payments available to all tiers as described in § 1469.23(d).

*Enrollment categories* means a classification system built on science-based, data-supported criteria consistent with historic conservation performance used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

*Existing practice component of CSP payments* means the component of a CSP payment as described in § 1469.23(b).

*Field Office Technical Guide (FOTG)* means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments 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.

*Forest land* means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide.

*Indian tribe* means any Indian tribe, band, nation, 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.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Indian trust lands* means real property in which:

(1) The United States holds title as trustee for an Indian or tribal beneficiary; or

(2) An Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

*Joint operation* means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 1400.3.

*Land cover/use* means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that

covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

*Land management practice* means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

*Limited resource producer* means a person:

(1) With direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) That 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 Commerce Department Data).

*Liquidated damages* means a sum of money stipulated in the CSP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Local work group* means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

*Maintenance* means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the

practice to its original condition if one or more components fail.

*Management intensity* means the degree and scope of actions or activities taken by a producer which are beyond the minimum requirements of a management practice, and which qualify as additional effort necessary to receive an enhancement payment.

*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 resources.

*Minimum level of treatment* means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides.

*Nationally significant resource concerns* means the significant resource concerns identified by NRCS in this part and in the sign-up announcement.

*New practice one-time payment* means the payment as described in § 1469.23(c).

*Operator* means an individual, entity, or joint operation who is determined by the county committee as being in general control of the farming operations on the farm during the current year.

*Participant* means a producer who receives payments or benefits from the Conservation Security Program.

*Pastureland* means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

*Person* has the same meaning as set out in 7 CFR 1400.3.

*Practice life span* means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

*Producer* means an owner, operator, landlord, tenant, or sharecropper that shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

*Quality criteria* means the minimally acceptable level of treatment required to achieve a resource management system for identified resource considerations for a particular land use as defined in the technical guide of NRCS.

*Rangeland* means a land cover/use category on which the climax or

potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

*Resource concern* means the condition of natural resources that may be sensitive to change by natural forces or human activity. NRCS identifies problems and opportunities relating to resource concerns by using predictive models, direct measurement, or observations in relation to client objectives. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

*Resource-conserving crop rotation* means a crop rotation that includes at least one resource-conserving crop and that reduces erosion, maintains, or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water.

*Resource management system* means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

*Sharecropper* means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

*Significant resource concerns* means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to

applicable requirements under CSP, such as eligibility.

*Soil quality* means resource concerns and/or opportunities related to depletion of soil organic matter content and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence root penetration and overall soil productivity.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Structural practice* means a conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

*Technical assistance* means the activities as defined in 7 CFR Part 1466.

*Technical Service Provider* means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR Part 652.

*Tenant* means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

*Tier* means one of the three levels of participation in CSP.

*Water quality* means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters and excessive nutrients and pesticides in ground waters.

*Watershed or regional resource conservation plan* means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS

National Planning Procedures Handbook.

*Wetlands Reserve Program (WRP)* means the Commodity Credit Corporation program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837, *et seq.*

#### § 1469.4 Significant resource concerns.

(a) Soil quality and water quality, as described in Section III of the NRCS Field Office Technical Guide, are nationally significant resource concerns.

(b) The minimum level of treatment for addressing resource concerns is that meeting or exceeding the quality criteria according to the NRCS technical guides.

(c) For each sign-up, the Chief may determine additional nationally significant resource concerns. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits.

#### § 1469.5 Eligibility requirements and selection and funding of priority watersheds.

(a) To be eligible to participate in CSP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;

(2) Have an interest in the farming operation as defined in 7 CFR 1400.3;

(3) Have control of the land for the life of the proposed contract period;

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner.

(iii) If the applicant cannot show control of a parcel for the life of the contract, that part of the agricultural operation that does not qualify for any payment component. However, the land is considered part of the contract and is required to be maintained at the same conservation standard of the rest of the operation.

(4) Tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on part of the agricultural operation. Only the acreage meeting the requirements in § 1469.7(a) is eligible for payment in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(b)(5).

(5) Share or be entitled to share in the crop or livestock available for marketing from the agriculture operation;

(6) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a);

(7) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to information related to eligibility criteria in the sign-up announcement; and information to verify the applicant's status as a beginning farmer or rancher;

(8) Meet additional eligibility criteria and contract requirements that may be included in a CSP sign-up announcement pursuant to § 1469.20(b).

(b) To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation;

(3) Agricultural land that is Tribal, allotted, or Indian trust land; and

(4) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, turn rows, intermingled small wet areas or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural operation or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and

other such developed areas. Other land must be treated in Tier III contracts.

(c) The following land is not eligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program;

(2) Land enrolled in the Wetlands Reserve Program;

(3) Land enrolled in the Grassland Reserve Program pursuant to 16 U.S.C. 3838n;

(4) Public land.

(d) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(e) Selection and funding of priority watersheds.

(1) NRCS will nationally prioritize watersheds based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Vulnerability to surface and ground water quality;

(ii) Potential for excessive soil quality degradation;

(iii) Condition of grazing land.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(3) NRCS will request public comment on the process used to select the watersheds before the sign-up announcement.

#### **§ 1469.6 Enrollment categories.**

(a) NRCS will publish and consider public comment on the specific enrollment categories that will be used for identifying, classifying and prioritizing contracts to be funded pursuant to § 1469.20(b). Enrollment categories would be constructed using science-based, data-supported criteria consistent with historic conservation performance. The enrollment categories will be defined by criteria related to resource concerns and levels of treatment already documented in the benchmark inventory, and willingness to achieve additional environmental performance.

(b) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(c) NRCS will develop subcategories within each enrollment category. The

development of subcategories may consider several factors, including:

(1) Willingness of the applicant to participate in local conservation enhancement activities;

(2) Targeting program participation for Limited Resource Producers;

(3) Targeting program participation to water quality priority areas for nutrient or pest management;

(4) Targeting program for at-risk species habitat creation and protection; and

(5) Other priorities as determined by the Secretary.

(d) At the beginning of each sign-up, the Chief will announce the order in which categories are eligible to be funded. The preamble to the sign-up notice must specify the projected number of applicants for enrollment in each category, projected expenditures for enrollees in the priority category, available funding, and other revenue projected to be available for the sign-up, and results—projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, e.g., changes in the cost of practice implementation, changes in technology, changes in the cost of non-USDA technical assistance, and waiting time to receive technical assistance.

(e) An eligible application will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(f) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up announcement are exhausted.

#### **§ 1469.7 Benchmark condition inventory and conservation security plan.**

(a) Benchmark condition inventory.

(1) CSP applicants will develop and submit a benchmark condition inventory of the entire agricultural operation or the portion of the agricultural operation intended to be enrolled in accordance with § 1469.5(a)(7).

(2) The benchmark condition inventory must include:

(i) A description of the applicant's production system on the agricultural operations;

(ii) The land uses, acreage, and other information; and

(iii) The existing conservation practices and resource concerns, problems, and opportunities on the operation.

(3) NRCS will use the benchmark condition inventory to:

(i) Determine CSP eligibility;

(ii) Place an eligible contract into an appropriate enrollment category;

(iii) Verify the tier(s) of CSP participation; and

(iv) Determine payments for existing conservation practices under the CSP contract.

(b) Conservation security plan.

(1) Once an application has been selected as eligible for CSP, NRCS may assist producers that agree to enter into conservation security contracts in developing a conservation security plan that provides specific information for improving and maintaining the natural resources of the agricultural operation. To enter into a CSP contract, an applicant must submit an NRCS-approved conservation security plan.

(2) The conservation security plan must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation security contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A benchmark conditions inventory as described in § 1469.7(a);

(iv) The significant resource concerns and other resource concerns to be addressed in the contract;

(v) A description and implementation schedule of:

(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up;

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns;

(C) Eligible enhancement activities as selected by the participant and approved by NRCS; and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of which conservation activities that qualify for enhancements within that tier that are required for a participant to transition to higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS.

(3) The conservation security plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(4) All conservation practices in the conservation security plan must be carried out in accordance with the applicable NRCS Field Office Technical Guide.

#### **§ 1469.8 Conservation practices.**

(a) Conservation practice selection.

(1) The Chief will provide a list of structural, vegetative, and land management practices and intensive management activities eligible for CSP payment. When determining the list of practices and their associated rates, the Chief will consider:

(i) The conservation practice's cost effectiveness;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice will address;

(iv) Locally available technology;

(v) New and emerging conservation technology; and

(vi) Ability to address the resource concern based on site specific conditions.

(2) State Conservationists may develop a targeted subset of eligible practices based on the nationally eligible list with concurrence of the Chief for their proposed listing of:

(i) Eligible conservation practices for both new and existing practice payments; and

(ii) Conservation practices, measures, and management activities proposed for enhancement payments.

(3) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(4) NRCS will make the list of eligible practices and their individual cost-share rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except for provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application for the program.

(d) New practice installation payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental

benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level. The State Conservationist can supplement specific criteria to meet localized conditions within the State or areas.

#### **§ 1469.9 Technical assistance.**

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation security plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the CSP contracts and contract payments.

(e) Conservation security plans will be developed by NRCS certified conservation planners.

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

#### **§ 1469.20 Application for contracts and their selection.**

(a) Participation in CSP is voluntary.

(b) NRCS will publish a CSP sign-up notice with sufficient time for producer consideration prior to the close of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(1) Additional program eligibility criteria not listed in § 1469.5;

(2) Additional nationally significant resource concerns not listed in § 1469.4(a) that will apply;

(3) Additional requirements that participants must include in their CSP applications and contracts not listed in § 1469.21;

(4) Information on the priority order of enrollment categories for funding contracts;

(5) Specific information on the share of funding that NRCS estimates will go toward base, maintenance, and enhancement payments;

(6) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(7) The schedule for the sign-up process, including the deadline(s) for applying.

(c) NRCS will accept applications according to the timeframes specified in the sign-up announcement.

Applications must include:

(1) A complete benchmark condition inventory for the entire operation or for the portion being enrolled;

(2) Any other requirements specified in the sign-up announcement;

(3) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP; and

(4) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up announcement.

(5) Confirmation of basic eligibility criteria; and

(6) Enhancements that the applicant may be willing to undertake.

(d) Producers who are members of a joint operation must file a single application for the joint operation.

(e) Selection of contracts. NRCS will determine whether the application meets the eligibility criteria and will place applications into the appropriate enrollment category based on the criteria specified in the sign-up announcement until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up announcement and will inform the applicant of its determinations. NRCS will determine in which tier(s) the participant is eligible to participate. NRCS would notify applicants of these determinations.

(f) NRCS will schedule a follow-up interview with the applicant to construct the conservation security plan and to develop a conservation security contract for the selected applications. NRCS makes payments as described in the contract in return for their application and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

#### **§ 1469.21 Contract requirements.**

(a) To receive payments, each participant must enter into a conservation security contract and comply with its provisions. Among other things, the participant agrees to maintain at least the level of stewardship identified in the benchmark or the portion being enrolled

condition inventory for the entire contract period, as appropriate, and implement and maintain any new treatments required in the contract.

(b) Program participants will only receive payments from one conservation security contract per agricultural operation.

(c) CSP participants must address the following resource concerns to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contract requirement: additional requirements as required in the enrollment categories, over the part of the agricultural operation to be enrolled in CSP.

(2) Tier II contract requirement: additional requirements as required in the enrollment categories and a significant resource concern as described in Section III of the NRCS FOTG other than the nationally significant resource concerns, to be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(3) Tier III contract requirement: additional requirements as required in the enrollment categories will be selected by the applicant and approved by NRCS, over the entire agricultural operation.

(c) Transition to a higher tier of participation.

(1) Upon agreement by NRCS and the participant, a conservation security contract may include provisions that increase the tier of participation during the contract period. Such a transition does not require a contract modification providing that the transition is laid out in the schedule of contract activities. In the event that such a transition initiates with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all base, existing practice, new practice one-time payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract in which a participant transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and

(iii) A specification that the CSP payment will be based on the current

Tier of participation which may change over the life of the contract.

(3) A contract in which a participant transitions from Tier I to a higher tier must include:

(i) A participation period of no less than 18 months at Tier I;

(ii) A participation period of no less than 18 months at Tier II;

(iii) The applicable geographic boundaries for the Tier I contract period and the higher tier contract period;

(4) A contract in which a participant transitions from Tier II to Tier III must include a participation period of no less than 18 months at Tier II.

(d) A conservation security contract must:

(1) Incorporate by reference the conservation security plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Implement and maintain the practices as identified and scheduled in the conservation security plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements;

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract;

(iii) Refund any CSP payments received with interest, and forfeit any future payments under CSP, on the violation of a term or condition of the contract;

(iv) Refund all CSP payments received on the transfer of the right and interest of the owner or operator in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract; and

(v) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments:

(i) Relate to the schedule for implementing additional conservation measures as described in the security plan;

(ii) Relate to the participant's actual implementation of additional conservation measures as described in the security plan; and

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation.

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(e) The participant must apply and maintain the practice(s) within the timelines specified in the contract.

(f) Contracts expire on September 30 in the last year of the contract. Contracts are not renewable unless determined by the Chief as described in § 1469.24. A participant may apply for a new conservation security contract at the next sign-up.

(g) Participants must:

(1) Implement the conservation security contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(h) NRCS will determine the payments under the contract based in § 1469.23:

(i) NRCS will not pay participants for practices within their conservation security plan that are required to meet conservation compliance requirements found in 7 CFR Part 12; practices that are included in maintenance agreements (with financial reimbursements for maintenance) that have existed prior to the participant's conservation security contract approval; or the maintenance of equipment.

(j) For contracts encompassing the participant's entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

#### **§ 1469.22 Conservation practice operation and maintenance.**

The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract. The participant must operate and maintain the conservation practice(s) for its intended purpose for the life span of the conservation practice(s), as identified in the contract or conservation security plan, as determined by NRCS. Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out,

and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract. If an existing practice does not meet NRCS standards, the practice must be modified or updated to meet the standard according to the Field Office Technical Guide, or additional treatment must be completed to address the resource concern before the contract can be executed.

#### **§ 1469.23 Program payments.**

(a) Base component of CSP payments.

(1) The conservation security plan, as applicable, divides the land area to be enrolled in CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, and rangeland, among other categories.

(2) NRCS will determine an appropriate base rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using National Agriculture Statistics Service (NASS) regional rental data (or more local-level NASS data where available) with adjustments to ensure regional consistency.

(ii) Where typical rental rates for a given land use vary widely within a State, NRCS will use local data to adjust the average county-level rates then take a nationally set percentage of that average rate for a final rate.

(iii) Where consistent local data are not readily available for all areas for all land uses, NRCS will use the available data to determine reasonable local rates where feasible. The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The regionally adjusted rates will not change over the life of the program.

(v) The final base rate will be the adjusted regional rates described in paragraphs (a)(2)(i) through (iii) of this section multiplied by a factor of 0.1.

(3) NRCS will compute the Base Component of a participant's CSP payment as the product of: the number of acres in each land use category (not including "other"); the corresponding base rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments.

(4) Other land as defined in § 1469.5(b)(5) is not included in the base payment.

(5) NRCS will announce the base rates at the time of the first CSP sign-up.

(b) Existing practice component of CSP payments.

(1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with § 1469.8(a).

(2) With exceptions including, but not limited to, paragraphs (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. In no case will the payment exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the cost-share rates for each practice in CSP at the time of the sign-up announcements.

(3) NRCS will not pay for maintenance of structural practices when such maintenance is required by an agreement between the participant and a Federal or State authority.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan, as required by the Food Security Act of 1985.

(c) New practice one-time payments.

(1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with § 1469.8(a).

(2) If a participant's CSP contract requires the participant to implement a new structural, vegetative, or management practice, NRCS may pay the participant a percentage of the cost of installing the new practice. In no case will the payment exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county costs of installing the practice in the 2001 crop year. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up announcement.

(3) NRCS may pay new practice payments to participants to install structural conservation practices, except:

(i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or

(ii) The purchase or maintenance of equipment or a non-land based structure that is not integral to a land based practice, as determined by the Secretary.

(4) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(5) Cost-share payments may be provided by other USDA programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(6) If additional practices are installed or implemented to advance a participant from one tier of participation to a higher tier, the practice must be certified as established by NRCS and be maintained for 18 months prior to advancing to a higher tier as described in § 1469.24(b).

(7) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(8) NRCS will not pay a new practice one-time payment for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan, as required by the Food Security Act of 1985.

(d) Enhancement component of CSP payments.

(1) State Conservationists, with advice from the State Technical Committees, will develop and submit for concurrence to the Chief a proposed list of conservation activities that are eligible for enhancement payments.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation security plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy conservation as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the participant's Tier of participation as outlined in the sign-up announcement and as described in § 1469.4 and the contract requirements in § 1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up announcement; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation security plan as outlined in the sign-up announcement.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is included in a participant's Highly Erodible Land and Wetland Conservation Compliance plan as required by the Food Security Act of 1985.

(5) Eligible enhancement payments.

(i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each activity.

(ii) Enhancement payments will be determined based on a given activity's cost effectiveness and expected net environmental benefits, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance. This amount will not exceed the participant's estimated cost of undertaking such activity.

(iii) NRCS will provide the list of approved enhancement activities and payment amounts for each activity prior to the CSP sign-up announcements.

(e) Contracts will be limited as follows:

(1) \$20,000 per year for a Tier I conservation security contract,

(2) \$35,000 per year for a Tier II conservation security contract, or

(3) \$45,000 per year for a Tier III conservation security contract.

(4) Base components of CSP payments cannot exceed \$5,000 per year for Tier I, \$10,500 per year for Tier II, or \$13,500 per year for Tier III.

(f) The practice and enhancement components of CSP contract payment may increase once the participant applies and maintains additional conservation measures as described in the conservation security plan.

(g) The Chief of NRCS may limit the base, practice, and enhancement

components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) Land not under the control of the applicant for the life of the contract is subject to limits described in § 1469.5(a)(3)(iii).

#### **§ 1469.24 Contract modifications and transfers of land.**

(a) Contracts may be modified upon agreement between the Chief and the participant.

(b) Participants may modify their contract to change their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 18 months.

(c) Contract transfers are permitted when there is agreement among all parties to the contract. The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(d) The Chief may require a participant to refund all or a portion of any assistance earned under CSP if the participant sells or loses control of the land under a CSP contract, and the new owner or controller is not eligible to participate in CSP, or refuses to assume responsibility under the contract within 60 days after the date of the transfer or change in the interest of the land.

(e) The State Conservationist may require contract modifications if the State Conservationist determines that a change in the type, size, management, or other aspect of the agriculture operation would interfere with achieving the purposes of the CSP contract.

#### **§ 1469.25 Contract violations and termination.**

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the CSP contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has:

submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract, the participant must forfeit all rights for future payments under the contract and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with 7 CFR Part 1403. The State Conservationist can require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant must forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages depending upon the circumstances of the case.

(e) When making all contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(f) The participant may voluntarily terminate a contract if the State Conservationist determines that termination is justified based on information involving natural disasters, documented hardship situations and situations where termination is in the public interest.

(g) In carrying out the role in this section, the State Conservationist may consult with the local conservation district.

## Subpart C—General Administration

### § 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that producers 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 applicants seeking enrollment as to a producer's eligibility to participate in the contract as a tenant.

### § 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with 7 CFR Parts 11 and 614, Subparts A and C, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

- (1) Payment rates, payment limits, and cost-share percentages;
- (2) Eligible conservation practices; and
- (3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

### § 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from the participant's performance under the contract.

### § 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the producer prior to the exercise of this provision.

### § 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized

representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

### § 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any person without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR Part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR Part 1404.

### § 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a producer erroneously represented any fact affecting a CSP determination made in accordance with this part, such producer is not entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with § 1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest determined in accordance with § 1469.25 received by such producer with respect to all contracts. In addition, NRCS will terminate the participant's interest in all CSP contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

Signed in Washington, DC, on December 18, 2003.

**Bruce I. Knight,**

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

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