



Billing Code: 3410-16

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Commodity Credit Corporation

7 CFR Part 1470

RIN 0578-AA63

Conservation Stewardship Program (CSP) Interim Rule

[Docket No. NRCS-2014-0008]

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

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule with request for comment amends the existing Natural Resources Conservation Service (NRCS) regulation for the Conservation Stewardship Program (CSP) to incorporate programmatic changes as authorized by amendments in the Agricultural Act of 2014 (2014 Act).

DATES: Effective date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments using one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments for Docket No. NRCS-2014-0008.

- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. NRCS-2014-0008, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1-1112D, Beltsville, MD 20705.

NRCS will post all comments on <http://www.regulations.gov>. If your comment includes your address, phone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not wish for it to be made public.

FOR FURTHER INFORMATION CONTACT: Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890. Telephone: (202) 720-1845. Fax: (202) 720-4265.

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Upon implementation of this rule the Natural Resources Conservation

Service intends to conduct a retrospective review of this rule with the purpose of improving program performance, emphasizing priority enhancements, and better understanding the longevity of conservation implementation.

The Office of Management and Budget (OMB) designated this interim rule with request for comment a significant regulatory action. The administrative record is available for public inspection in Room 5831 South Building, USDA, 14th and Independence Avenue, SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted a cost-effectiveness analysis (CEA) of the potential impacts associated with this program. A summary of the effectiveness analysis can be found at the end of this preamble and a copy of the analysis is available upon request from the Director, Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20250-2890 or electronically at: <http://www.nrcs.usda.gov/programs/csp/> under the CSP Rules and Notices with Supporting Documents title.

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make the provisions easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?

- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Even so, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Environmental Analysis

NRCS has determined that changes made by this rule fall within a category of actions that are excluded from the requirement to prepare either an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The changes made by the rule are primarily those mandated by the 2014 Act, though there are additional administrative changes made to improve

consistency with other NRCS programs and make other clarifications. NRCS has no discretion with respect to changes mandated by the 2014 Act; therefore the National Environmental Policy Act (NEPA) does not apply. Administrative changes made in this rule fall within a categorical exclusion for policy development relating to routine activities and similar administrative functions (7 CFR 1b.3(a)(1)) and NRCS has identified no extraordinary circumstances that would otherwise require preparation of an EA or EIS.

To further its site-specific compliance with NEPA, NRCS reviewed the 2009 CSP Programmatic EA, and found this rule makes no substantial changes that are relevant to environmental concerns as compared to the EA proposed action. Furthermore, NRCS has not found any significant new circumstances or information relevant to environmental concerns. As a result, NRCS will continue to tier to the 2009 CSP Programmatic EA as appropriate to meet NEPA requirements related to site-specific activities.

Public comment on the environmental analysis only may be submitted by any of the following means: 1) email comments to andree.duvarney@wdc.usda.gov, 2) go to <http://www.regulations.gov> and follow the instructions for submitting comments for Docket No. NRCS-2014-0008, or 3) mail written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Room 6159-S, P.O. Box 2890, Washington, D.C. 20013-2890.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the interim rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The national target of setting aside 5 percent of CSP acres for socially disadvantaged farmers and ranchers and an additional 5 percent of CSP acres for beginning

farmers and ranchers; and prioritizing veterans applications that are competing in these subaccounts for socially disadvantaged farmers or ranchers and beginning farmer or ranchers is expected to increase participation among these groups.

The data presented in the analysis indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that CSP will continue to be administered in a nondiscriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed decisions regarding the use of their lands that will affect their participation in USDA programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this interim rule portends no adverse civil rights implications for women, minorities and persons with disabilities.

Paperwork Reduction Act

Section 1246 of the Food Security Act of 1985 (the 1985 Act) provides that implementation of programs authorized by Title XII of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum

extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 13175

This interim rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under EO 13175. The rule neither imposes substantial direct compliance costs on Tribal Governments nor preempts Tribal law. The agency has developed an outreach/collaboration plan that it will implement as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

The 2014 Act changes to CSP that address participation by Indian Tribes are limited to special funding arrangements from the CSP-specific provisions of Section 1241 of the 1985 Act, and streamlining the use of the definition of Indian Tribes. These changes are discussed more fully herein.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires NRCS to prepare a written statement, including a cost-benefit assessment, for proposed and final rules with “Federal mandates” that may result in such expenditures for State, local, or Tribal Governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal Governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

NRCS has considered this interim rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the interim rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National Government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim rule does not have Federalism implications.

Economic Analysis — Executive Summary

The Conservation Stewardship Program (CSP) is authorized under the provisions of Chapter 2, Subtitle D of Title XII of the Food Security Act of 1985 (1985 Act), as amended by

Title II, Subtitle D of the Food, Conservation, and Energy Act of 2008 (2008 Act) and by Title II, Subtitle B of the Agriculture Act of 2014 (2014 Act). The Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service (NRCS), administers the program.

As part of the 2014 Act, Congress reauthorized CSP and capped enrollment at 10 million acres for each fiscal year (FY) during the period February 7, 2014, through September 30, 2022; however, the 2014 Act only provided funding through FY 2018. CSP contracts run for 5 years and include the potential for a one-time renewal for an additional 5 years, thus creating financial obligations through FY 2027 for commitments made during FY 2014 to FY 2018. Nationally, program costs cannot exceed an annual average rate of \$18 per acre. For each of the five FY signups (FY 2014 to FY 2018) including a one-time contract renewal for an additional 5 years, Congress committed a maximum of \$1.8 billion. Total authorized funding equals \$9 billion for the five signups (FY 2014 to FY 2018).

Participation in CSP is voluntary. Agricultural and forestry producers decide whether or not CSP participation helps them achieve their conservation objectives. Hence, CSP participation is not expected to negatively impact program participants and nonparticipants.

Pursuant to Executive Order 12866 and OMB Circular A-4 that provides guidance in conducting regulatory analyses, NRCS conducted an assessment of CSP consistent with this rule's designation as a significant regulatory action. Most of this rule's impacts consist of transfers from the Federal Government to producers. Although these transfers create incentives that very likely cause changes in the way society uses its resources, we lack data to estimate the resulting social costs or benefits. This analysis therefore, includes a summary of program costs and qualitative assessment of program impacts.

Total projected government program obligations for CSP are shown in table 1. Obligations include only costs to the government between FY 2014 and FY 2027 (five signups with one-time, 5-year contract renewals). Projected maximum program obligations in nominal dollars equal \$9 billion. Given a 3 percent discount rate, projected cumulative program obligations equal \$6,405 billion in constant 2014 dollars. At a 7 percent discount rate, maximum program obligations equal \$4,942 billion in constant 2014 dollars. Average annualized obligations at the 3 percent and 7 percent discount rates equal \$567 million and \$565 million, respectively.

Table 1. Total Projected Program Obligations for CSP, FY 2014 through FY 2027^a

Fiscal Year	Obligation^b (million \$)	GDP Price Deflator^c (2014=100)	Obligation Constant Dollars (million \$)	Discount Factors for 3%	Present Value of Obligation - 3% (million \$)	Discount Factors for 7%	Present Value of Obligation - 7% (million \$)
FY14	180	100.0000	180	0.9709	175	0.9346	168
FY15	360	102.1000	353	0.9426	332	0.8734	308
FY16	540	104.2441	518	0.9151	474	0.8163	423
FY17	720	106.4332	676	0.8885	601	0.7629	516
FY18	900	108.6683	828	0.8626	714	0.7130	591
FY19	900	110.9504	811	0.8375	679	0.6663	541
FY20	900	113.0584	796	0.8131	647	0.6227	496
FY21	900	115.2065	781	0.7894	617	0.5820	455
FY22	900	117.3954	767	0.7664	588	0.5439	417
FY23	900	119.6260	752	0.7441	560	0.5083	382
FY24	720	121.8989	591	0.7224	427	0.4751	281
FY25	540	124.2149	435	0.7014	305	0.4440	193
FY26	360	126.5750	284	0.6810	194	0.4150	118
FY27	180	128.9799	140	0.6611	92	0.3878	54
Total	9,000		7,912		6,405		4,942
Annualized Obligations					567		565

^aTable 1 in the main document.

^bCongress set a maximum of 10 million acres per signup and a national payment rate of \$18 per acre. With a one-time contract renewal option, each signup equals \$1.8 billion in projected program obligations over its 10-year period. Congress authorized five signups.

^cFor years 1 to 5, the GDP adjustment is 2.10 percent (OMB); for years 6 to 14, the GDP adjustment factor is 1.90 percent (average growth since 1993).

Compared to CSP as authorized under the 2008 Act, Congress significantly reduced its size but left much of CSP's underlying structure intact. In addition, the Secretary of Agriculture proposed a number of discretionary administrative changes as a means of improving program implementation.

As shown in table 2, the downsizing of CSP from an annual 12.769 million acre program to an annual 10 million acre program has the greatest impact on program funds, conservation activities, and cost-effectiveness. Program funds, which include financial and technical assistance, decrease by \$2.492 billion (nominal dollars) compared to CSP under the 2008 Act. With fewer acres and fewer dollars, fewer contracts will be funded under the 2014 Act. The new conservation activities that would have been applied to enhance the existing activities on the lost 2.769 million acres will not be applied to the Nation's working lands. However, cost-effectiveness, defined as dollars per additional unit of conservation effect, will improve slightly because lower ranked eligible applications are the first ones cut from every State's ranking pools. That is, obligations per unit of conservation effect will be lower under the 2014 Act. Properly implemented, a smaller sized CSP will be neutral in its impacts across all producer types, including beginning and socially disadvantaged groups.

Table 2. Program Impacts of the Statutory Requirements and Discretionary Actions^a				
<i>Based on 2008 CSP Farm Bill Provisions: 12.769 Million Acres vs. 10 Million Acres</i>				
Statutory	Program Funds	Impacts of Conservation Activities	Cost-Effectiveness	Participant Diversity
Acres Enrollment Limitation	- \$2.492 billion in program funds	Significantly large decrease	Slight improvement	No impact
<i>2008 CSP at 10 Million Acres vs. 2014 CSP at 10 Million Acres</i>				
Statutory	Program Funds	Impacts of Conservation Activities	Cost-Effectiveness	Participant Diversity
Conditions for Contract Renewal	Small/Moderate decrease	Increase	Improvement	No Impact
Discretionary	Program Funds	Impacts of Conservation Activities	Cost-Effectiveness	Participant Diversity
Contract Renewal: To renew contracts, shift eligibility determinations to	Moderate decrease	Marginal Increase	Marginal Improvement	No Impact

One additional legislated change in the 2014 Act, additional contract renewal requirements is also expected to generate smaller, yet important program impacts. The legislated 2014 contract renewal requirements – producer agrees to meet the stewardship thresholds for at least two additional priority resource concerns by the end of the renewed contract period or to exceed the stewardship thresholds of at least two existing priority resource concerns specified in the original contract – will likely result in a slightly larger portion of CSP participants not renewing their contracts compared to a comparably sized 2008 CSP and renewal rate. The 2008 Act only requires the addition of one or more new conservation activities for contract renewal. However, CSP participants under the 2014 Act are required to add activities to meet or exceed stewardship thresholds for at least two priority resource concerns, thus likely increasing the number of additional activities applied during the second 5-year period. With yearly payments

extended and more activities being applied under 2014 Act renewals, a small improvement in cost-effectiveness is expected. Overall no differential impacts are expected between general agricultural and general forest producers and beginning and socially disadvantaged producers, including veteran status.

An important discretionary change is clearly defining the terms “applicable priority resource concerns” and “other priority resource concerns.” “Applicable priority resource concerns” represent resource issues within a watershed or portion of a State that NRCS is targeting for improvement. “Other priority resource concerns” are resource concerns that are currently not being targeted for improvement. These definitions allow NRCS to better describe how it is targeting resources to meet statutory objectives.

In summary, differences in program impacts between the 2008 CSP and the 2014 CSP can be attributed primarily to the program’s smaller acre cap of 10 million acres. Statutory requirements related to contract renewals and proposed discretionary actions will result in a more focused approach to meeting conservation objectives.

Comments Invited

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about the changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any recommended changes, and include supporting data and references to statutory language. All comments received on or before the closing date for comments will be considered. This regulation may be changed because of the comments received. All comments received, as well as a report summarizing each substantive public comment received concerning this interim rule will be filed in the docket

(No. NRCS-2014-0008). The docket, including any personal information provided, will be made available for public inspection.

DISCUSSION OF CONSERVATION STEWARDSHIP PROGRAM (7 CFR part 1470):

The Food, Conservation, and Energy Act of 2008 Act (2008 Act) amended the Food Security Act of 1985 (1985 Act) to establish the Conservation Stewardship Program (CSP) and authorize the program in FY 2009 through FY 2013. The Agriculture Act of 2014 (the 2014 Act) reauthorizes and revises CSP.

The purpose of CSP is to encourage producers to address priority resource concerns and improve and conserve the quality and condition of the natural resources in a comprehensive manner by: (1) undertaking additional conservation activities; and (2) improving, maintaining, and managing existing conservation activities. The Secretary of Agriculture delegated authority to the Chief, NRCS, to administer CSP.

Through CSP, NRCS provides financial and technical assistance to eligible producers to conserve and enhance soil, water, air, and related natural resources on their land. Eligible lands include private or tribal cropland, grassland, pastureland, rangeland, nonindustrial private forest lands and other land in agricultural areas (including cropped woodland, marshes, and agricultural land or capable of being used for the production of livestock) on which resource concerns related to agricultural production could be addressed. Participation in the program is voluntary.

CSP encourages land stewards to improve their conservation performance by installing and adopting additional activities, and improving, maintaining, and managing existing activities on eligible land. NRCS makes funding for CSP available nationwide on a continuous application basis.

NRCS coordinates its implementation of CSP with the other premier Farm Bill working lands program, the Environmental Quality Incentives Program (EQIP). CSP and EQIP work in a complementary manner to address conservation issues associated with agricultural operations. In particular, EQIP emphasizes assistance upon the magnitude of the expected conservation benefit and thus address those natural resource concerns that are creating significant environmental impact, while CSP emphasizes assistance to producers who are already addressing some of these potential environmental impacts by meeting a priority resource concern's stewardship level of treatment and encourages these producers to achieve greater stewardship performance in a comprehensive manner. Thus, a producer can receive assistance to install conservation practices under EQIP that enables the producer to meet the stewardship threshold for a priority resource concern, which in turn enables the producer to be eligible for CSP. In this way, CSP builds upon the conservation efforts initiated under EQIP and expands upon them to a new level of conservation performance.

Summary of CSP Provisions

The CSP regulation is organized into three subparts: Subpart A — General Provisions; Subpart B — Contracts; and Subpart C — General Administration. Below is a summary of the changes made to each subpart based upon the changes made to CSP by the 2014 Act.

The 2014 Act made the following changes to CSP implementation:

- Establishes implementation for FY 2014 through FY 2018 (the 2008 Act was for FY 2008 through FY 2014);

- Limits eligible land to land in production for at least four of the 6 years preceding February 7, 2014, the date of enactment of the Agricultural Act of 2014 (previous date was June 18, 2008);
- Requires contract offers to meet or exceed the stewardship threshold for at least two priority resource concerns (the 2008 Act only required one resource concern) and meet or exceed the stewardship threshold for one additional priority resource concern by the end of the contract (the 2008 Act required one priority resource concern);
- Strikes the definition and references to “conservation measurement tools” (the 2008 Act did not contain a similar provision);
- Requires that the contract must include all eligible land under the effective control of the applicant that is operated substantially separate from other operations for the term of the contract;
- Allows enrollment of lands that are protected by an agricultural land easement under the newly authorized Agricultural Conservation Easement Program (ACEP) (the 2008 Act did not include ACEP);
- Allows enrollment of lands that are in the last year of the Conservation Reserve Program (CRP) (the 2008 Act did not contain a similar provision). The CRP contract must expire at the end of the fiscal year in which the land is to be enrolled in CSP, and the CRP payment for enrolled land must cease before the first CSP payment is made;

- Allows contract to be renewed if the threshold for two additional priority resource concerns will be met or the stewardship threshold will be exceeded for two existing priority resource concerns (the 2008 Act did not contain a similar provision);
- Requires that at least five priority resource concerns be identified for each area or watershed (the 2008 Act required three to five priority resource concerns);
- Requires NRCS to establish a science-based stewardship threshold for each priority resource concern (the 2008 Act did not contain a similar provision);
- Authorizes NRCS to prorate conservation performance so that a participant may receive equal annual payments to the greatest extent practicable;
- Emphasizes conservation activities to be implemented across the agricultural operation;
- Authorizes a supplemental payment for improving resource conserving crop rotations (the 2008 Act did not contain a similar provision);
- Removed the 10 percent cap on nonindustrial private forest land enrollment;
- Included a preference for veterans (the 2008 Act did not contain a similar provision);
- Reduces the annual enrollment limit from 12,769,000 to 10,000,000 acres; and
- Establishes CSP as a covered program authorized to be used to accomplish the purposes of the Regional Conservation Partnership Program (RCPP) (Subtitle I of Title XII of the Food Security Act of 1985, as amended by the 2014 Act) (the 2008 Act did not contain a similar provision).

Subpart A — General Provisions

Section 1470.1 Applicability.

Section 1470.1, “Applicability,” sets forth the policies, procedures, and requirements of CSP. In paragraph (a), NRCS clarifies that contracts entered into prior to the 2014 Act are administered according to the CSP regulation in effect prior to enactment, and that contracts entered into after enactment of the 2014 Act will be administered under these regulations. Paragraph (b) updates CSP purposes consistent with the changes made to CSP purposes by the 2014 Act.

Section 1470.2 Administration.

Section 1470.2, “Administration,” describes the roles of NRCS at the National and State levels. Paragraph (b) is revised to clarify the scope of the authority of the Chief to change delegations within the agency or to modify or waive certain discretionary provisions of this regulation. As revised by the 2014 Act, NRCS replaced reference in paragraph (c) to “conservation measurement tools” with the establishment of “science-based stewardship thresholds for each priority resource concern.” NRCS revised paragraph (d) to identify that between FY 2014 and FY 2022, NRCS will enroll an additional 10,000,000 acres in each fiscal year and continue operating the program to achieve a national average rate of \$18 per acre, which includes the costs to the Federal Government for all financial and technical assistance, and any other expenses associated with program enrollment and participation.

NRCS modified paragraph (e)(1)(ii) to require that NRCS will identify not less than five applicable priority resource concerns in particular watersheds, geographic areas, or other appropriate regions within a State, as required by statute. Applicable priority resource concerns are selected by the State from a defined list of priority resource concerns identified at the national level and have the most important environmental challenges associated with agricultural production in the State or region. The current suite of priority resource concerns is comprised of the following: air quality, animal, energy, plants, soil erosion, soil quality, water quality, and water quantity. NRCS retains the authority to modify this suite of priority resource concerns. For example, the Chief may want to target a geographic area where expanding wildlife concerns are deemed more significant as compared to energy concerns. This requirement is now captured in (e)(2). NRCS removed paragraphs (e)(1)(iv) and (v) consistent with the 2014 Act changes to remove on-farm research and demonstration and pilot projects under CSP, and to reflect the repeal of the Cooperative Conservation Partnership Initiative.

Section 1470.3 Definitions.

Section 1470.3, “Definitions,” sets forth definitions for terms used throughout this regulation. The following definitions have been modified to reflect changes made by the 2014 Act: “agricultural operation,” “conservation activities,” and “priority resource concern.” The terms “conservation measurement tool” and “resource concern” have been removed to conform to changes made by the 2014 Act.

The term “animal waste storage or treatment facility” was also removed. This avoids unnecessarily narrowing the application of the term.

The term “conservation planning” was removed because its terms are covered in § 1470.22, Conservation Stewardship Plan. The definition of “conservation practice” was modified to be more consistent with the definition used in the Environmental Quality Incentives Program (EQIP). The definition of “conservation stewardship plan” was modified to be consistent with § 1470.22, Conservation Stewardship Plan.

The term “designated conservationist” was removed since it is no longer used in the regulation.

Throughout, the term “agricultural land” was removed and replaced with “eligible land,” which describes those areas identified by CSP’s authorizing legislation—working agricultural land being actively managed for agricultural production purposes upon which CSP will be focused. The definition for eligible land is consistent with that term added by the 2014 Act to section 1238D(4) of the Food Security Act of 1985.

The term “enhancement” was modified to link an enhancement’s management intensity with the Field Office Technical Guide quality criteria, Section III, for each resource concern. Quality criteria specifics are located at: <http://efotg.sc.egov.usda.gov/>.

The term “enrollment” was removed. Since this definition was unique to the FY 2009 enrollment, it is no longer needed.

The term “historically underserved producer” was added to simplify references to several statutorily-defined categories of producers who are frequently referred to collectively.

The definition of “legal entity” was modified to be consistent with the definition used in EQIP.

The definition of “limited resource farmer or rancher,” was modified by removing the reference to “\$142,000” that applied in 2010 only, and clarifying how the term is applied to legal entities or joint operations.

The definition of “National Organic Program” was modified to include the reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

The definition of “operation and maintenance” was modified to be consistent with the definition in the EQIP regulation.

The definition of “priority resource concern” was amended to conform to the statute which defines the term as a natural resource concern or problem that is identified at the national, State, or local level and to explain the terms “applicable” priority resource concerns and “other” priority resource concerns in the context of the base term.

The definition of “producer” was modified to correct a citation.

The definition of “socially disadvantaged producer” was amended to conform to the statutory definition of the term.

The term “state conservationist” was removed and replaced throughout with the term “NRCS” to allow more flexibility in internal agency delegation of authority.

The definition of “stewardship threshold” was modified to remove reference to the conservation measurement tool (CMT) consistent with its removal by the 2014 Act. Additionally, NRCS removed the clause “natural resource conservation and environment.” The stewardship threshold is used to determine if an applicant meets the minimum treatment requirements to be eligible for CSP, and is also used as part of the ranking process. NRCS

guides its efforts to set stewardship thresholds at sustainable levels for natural resource treatment.

The definition of “technical service providers” was modified to be consistent with 7 CFR part 652.

The definition of “veteran farmer or rancher” was added to address the new provision in the 2014 Act to prioritize individuals under this category.

Several other definitions in this rule were amended for clarity and to be consistent with definitions adopted for other conservation programs.

Section 1470.4 Allocation and management.

Section 1470.4, “Allocation and management,” addresses national allocations and how the proportion of eligible land will be used as the primary means to distribute CSP acres and associated funds among States. The agency plans to use a nationally consistent method to document resource needs and provide a foundation for establishing priorities within States. Inputs may include National Resources Inventory (NRI) land use data, NRI soil erosion estimates, NRI Rangeland Resource Assessment rangeland health data, NRI CEAP soil organic carbon data, and various attributes from the Soil Survey Geographic database. These and other data layers maybe used to calculate critical acres by State and resource concern. The considerations listed in paragraph (a)(2) have been modified to follow statutory allocation criteria provided in section 1238G(b)(2) of the Food Security Act. The 2014 Act amended section 1241(h) of the Food Security Act of 1985 to extend the assistance available to “certain farmers or ranchers for conservation access” for FY 2014 through FY 2018. Therefore, NRCS modified paragraph (c) to reflect that 5 percent of the CSP acres in each of FY 2014 through FY

2018 will be available to assist socially disadvantaged farmers or ranchers and 5 percent of the CSP acres in each of FY 2014 through FY 2018 will be available to assist beginning farmers or ranchers. Additionally, the 2014 Act added a priority within the conservation access acreage set-aside for veteran farmer or ranchers. This priority has been added to paragraph (d).

The original language in paragraph (e) has been removed from the regulation, consistent with the repeal of the Cooperative Conservation Partnership Initiative. NRCS identifies in the revised paragraph (e) that certain adjustments, based on resource assessments, may need to be made to the allocation of acres to States to ensure equitable and effective implementation to meet the purposes of the program and ensure National enrollment. In particular, NRCS may know at the time of determining a fiscal year's allocation of acres that while the allocation is based primarily on each State's proportion of eligible land to the total acreage of eligible land in all States, resource assessment adjustments are needed to ensure that each State's allocation does not exceed its ability to enroll land into the program. Additionally, once allocations have been made, a reallocation of acres may be necessary because one State is unable to meet its enrollment targets while demand of high priority projects is available in another State.

Section 1470.5 Outreach Activities.

NRCS removed paragraph (d) to align the CSP rule with the EQIP rule.

Section 1470.6 Eligibility requirements.

Section 1470.6, "Eligibility requirements," sets forth the criteria for determining applicant and land eligibility. NRCS adjusted the regulatory language slightly to address "other producers" who are not identified as the operator in the Farm Service Agency farm records system but otherwise meet program eligibility criteria. NRCS modified the rule to reflect several

changes made in the Food Security Act of 1985 by the 2014 Act. Paragraph (b) was modified to use the new term “eligible land,” that reflects the new statutory definition.

Subpart B — Contracts and Payments

Section 1470.20, Application for contracts and selecting offers from applicants.

Section 1470.20, “Application for contracts and selecting offers from applicants,” identifies procedures associated with contract application requirements, the application evaluation process, and application acceptance. NRCS amended paragraph (a) to clarify that applicants may submit an application for the agricultural operation. Paragraph (b) defines contract application requirements. Consistent with the 2014 Act revision to enrollment eligibility, NRCS modified paragraph (b)(1) to specify that an applicant must meet a stewardship threshold for at least two priority resource concerns at the time of contract offer. The 2008 Act had only required an applicant to meet one resource concern at the time of application. NRCS also amended paragraph (b)(2) to clarify that an applicant must meet or exceed the stewardship threshold for at least one additional priority resource concern by the end of the conservation stewardship contract. An applicant accomplishes this by installing and adopting additional conservation activities and by improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract application is accepted by NRCS.

NRCS removed paragraph (b)(4) as it addressed on-farm research and demonstration activities or pilot testing, which are activities removed from stewardship contracts by the 2014 Act.

The 2014 Act specified application ranking factors and paragraph (c) was modified to conform to the amended statutory ranking factors. The 2014 Act slightly modified the phraseology used to describe the ranking factors that had originally been identified in the 2008 Act and added a new factor related to the extent to which priority resource concerns will be addressed when transitioning from CRP to agricultural production.

NRCS removed reference to the CMT that had previously been identified in the ranking factors. However, the removal of the statutory and regulatory reference does not prohibit NRCS from utilizing the CMT or equivalent methodology, but simply removes the requirement that it be used.

Paragraph (d) on weighting of ranking factors was modified to clarify the authority of the Chief to adjust these factors as required to address any program objective, including placing emphasis on increasing net conservation benefits. Previously, the regulation simply identified the Chief could adjust the weighting of ranking factors to increase net conservation benefit.

During the first years of program implementation, NRCS ranked every application within a pool according to equally weighted ranking factors. NRCS selected applications for enrollment beginning with the highest ranked one and worked down the ranked list until a pool's funding limit or acreage limit was reached. This translated into an effective weighting scheme that shifted the program towards enrollment based upon additionality.

For the 2014 Act, the Chief will apply weights to the ranking factors to address evolving resource issues and priority adjustments. As reflected by the statutory ranking factors, NRCS will maintain weightings of ranking factors that continue to emphasize greatly the extent to which additional activities will be adopted. For example, the NRCS Chief may decide to place increased weights to those factors that relate to additional activities in order to increase the net

new conservation benefit. Further, the NRCS Chief may make adjustments to ensure that the consideration of the enrollment of transitioning CRP lands as a ranking factor are fully assimilated with the other ranking factors so that such applications are equitably evaluated.

NRCS is seeking specific comment on how the factor for CRP land should be weighted in proportion to other ranking factors giving consideration for other lands being offered for enrollment.

NRCS removed from paragraph (f) the reference to NIPF enrollment limitation that had been removed by the 2014 Act.

Section 1470.21 Contract requirements.

Section 1470.21, “Contract requirements,” identifies elements contained within a contract and the responsibilities of a CSP participant. A participant must enter into a CSP contract, including a conservation stewardship plan, to enroll their eligible land and to receive payment. NRCS modified paragraph (b)(4)(i) to clarify that the participant must implement the conservation stewardship plan. NRCS also clarified at paragraph (b)(4)(vi) that a participant is required to “maintain and supply information” as requested by NRCS to determine “compliance with the conservation stewardship plan and any other requirements of the program.” Similarly, NRCS clarified at paragraph (b)(4)(vii) that a participant must not conduct any activities on the agricultural operation that would tend to defeat the purposes of the program. These participant requirements are included in the 2014 Act revisions to the participant’s responsibilities under CSP.

Section 1470.22 Conservation stewardship plan.

Section 1470.22, “Conservation stewardship plan,” describes that NRCS will use the conservation planning process to encourage producers to address priority resource concerns in a comprehensive manner. The conservation stewardship plan contains a record of the participant’s decisions on the schedule of conservation activities to be implemented, managed, and improved under CSP.

NRCS added language at paragraph (c) that the conservation stewardship plan describes “conservation activities to be implemented, managed, or improved.” Additionally, NRCS removed the references to the CMT, revised the term “resource concerns” to be “priority resource concerns, and removed the reference to on-farm research and demonstration or pilot testing, consistent with such changes made by the 2014 Act.

Section 1470.24 Payments.

Section 1470.24, “Payments,” describes the types of payments issued under CSP, how payments will be derived, and payment limitations. The 2014 Act revisions to CSP require NRCS to make several changes to the provisions at § 1470.24. Section 1470.24 was modified to remove all references to the CMT. NRCS also modified paragraph (a) by adding the payment factors required by the 2014 Act.

Under paragraph (b), a participant may receive supplemental payments when he or she adopts a resource-conserving crop rotation. NRCS modified paragraph (b), consistent with 2014 Act, to identify that a participant is eligible for a supplemental payment if the participant agrees to adopt or improve beneficial crop rotations as appropriate for the eligible land of the participant.

NRCS removed the provision related to on-farm research and demonstration or pilot testing at paragraph (c), and re-designated the remaining paragraphs as appropriate.

As re-designated, paragraph (f) addresses payment limitations applicable to a person or legal entity. Consistent with the 2014 Act revision, NRCS replaced the rolling 5-year period with the time period FY 2014 through FY 2018. NRCS also simplified the references to “federally-recognized” Indian Tribes, consistent with the definition of Indian Tribe at section 1201(14) of the Food Security Act of 1985 and corresponding to the streamlining of terminology at section 1238G(f) made by the 2014 Act.

The 2008 Act required that a person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$200,000 for all contracts entered into during any 5-year period. The 2014 Act replaced this “rolling” 5-year payment limitation with a \$200,000 limitation for all contracts entered into between FY 2014 and FY 2018. The regulation continues to include an annual payment limit of \$40,000 during any fiscal year to a person or legal entity. This annual limit was originally added to reduce the chance that participants would reach their \$200,000 5-year limit early in their contract term and have diminished incentive to meet their obligations over the 5-year life of the contract. NRCS clarified that participants that in the aggregate exceed \$200,000 for all contracts entered into prior to the end of the applicable period are expected to fulfill their contract obligation during the full term of the contract. NRCS monitors person or legal entity payment limitations through direct attribution to real persons.

The absence of a contract payment limitation in the 2008 Act caused concern because of the potential for excessively large contracts. Since each member of a joint operation is treated as a separate person or legal entity with payments directly attributed to them, contracts with a joint

operation could be very large. For example, a contract with a joint operation with five members who each reach their \$200,000 per person or legal entity limit could have contract payments of \$1 million. This created the potential for a high percentage of allocated acres and funds to be utilized in contracts with large joint operations to the detriment of smaller operations. To prevent large contracts of this nature, the 2010 final rule included a contract limit of \$200,000 over the term of the initial contract period with the exception of joint operations that could receive up to \$400,000 over the term of the initial contract period. This same limitation remains in this interim rule.

With regard to the payment limitation as it applies to contracts with Indians represented by the Bureau of Indian Affairs (BIA) or an Indian Tribe, payments exceeding the payment limitation may be made to the Tribal participant if the BIA or Tribal official certifies in writing that no individual will receive more than the payment limitation. The BIA or Tribe must also provide, annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The BIA or Indian Tribe must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or had income foregone related to conservation practice implementation.

NRCS also removed paragraph (l) related to payment data as the requirement to detail and segment CSP data has been removed from the CSP statute.

Section 1470.25 Contract modifications and transfers of land.

Changes made to section 1470.25, “Contract modifications and transfers of land,” clarify agency policy regarding voluntary contract modifications, consistent with the 2014 Act. NRCS

modified paragraph (b) to authorize the removal of acres from CSP to enroll in the Conservation Reserve Program (CRP), in a wetland easement through the Agricultural Conservation Easement Program (ACEP-WRE), other Federal or State program that offers greater natural resource protection. NRCS may also approve modifications related to voluntary land use changes to another land use, eligible or ineligible, that the participant wishes to make within particular parameters to ensure program purposes can be met. Prior to approving any modification, NRCS must determine that the modification is consistent with CSP purposes.

Paragraph (c) states that NRCS will not modify a contract to increase the contract obligation beyond the amount of the initial contract, except to implement an appeal determination or correct an administrative error as approved by NRCS. Modifications to transfer the contract to a successor in interest and changes made to the structure of an operation are not excluded from this provision. NRCS also has clarified policy with respect to transfer of land.

Section 1470.26 Contract renewal.

Under §1470.26, “Contract renewal,” NRCS may allow a participant to renew the contract for one additional 5-year period if they meet specific criteria. These criteria were modified by the 2014 Act, and therefore, paragraph (b) updates the criteria. NRCS is specifying that “applicable” priority resource concerns be addressed at the time of renewal given that the original contract addressed at least one or more priority resource concerns identified by the State and the test for renewal is whether existing or additional priority resource concerns identified by the State will be addressed during the renewed contract period. Previously, the requirement was that a participant only had to meet or exceed the stewardship threshold for one additional priority resource concern identified by the State.

In addition to incorporating the changes made by the 2014 Act, NRCS is taking this opportunity to clarify a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the CSP rule by streamlining the regulation to focus upon only those provisions that relate to conservation program participants' rights and responsibilities under the program. In multiple places NRCS removed references to duties of specific NRCS positions, including the State Conservationist, and purely internal NRCS processes.

Subpart C—General Administration

Section 1470.37 Environmental credits for conservation improvements.

Changes made to section 1470.37 clarify that environmental benefits achieved through participation in the CSP program may qualify for environmental credits under an environmental credit-trading program, and that NRCS asserts no direct or indirect interest in these credits. Further, any requirements or standards of such environmental market program to receive credits must be compatible with the purposes of the CSP contract.

REGULATORY CHANGES

List of Subjects in 7 CFR Part 1470

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

For the reasons stated in the preamble, part 1470 of title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1470 – CONSERVATION STEWARDSHIP PROGRAM

Subpart A – General Provisions

Sec.

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

Subpart B—Contracts and Payments

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

Subpart C—General Administration

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

Authority: 16 U.S.C. 3838d–3838g.

Subpart A—General Provisions

§ 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year (FY) 2014 and thereafter. Contracts entered into prior to FY 2014 will use the regulations and policies in effect the date prior to February 7, 2014.

(b) The purpose of CSP is to encourage producers to address priority resource concerns and improve and conserve the quality and condition of natural resources in a comprehensive manner by:

(1) Undertaking additional conservation activities; and

(2) Improving, maintaining, and managing existing conservation activities.

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

(d) NRCS provides financial and technical assistance to eligible producers.

§ 1470.2 Administration.

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

(b) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a nonstatutory, discretionary provision of this part if the Chief determines:

(1) The application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program; or

(2) The waiver of such discretionary provision is necessary to further the purposes of CSP under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985. To assist in RCPP implementation, the Chief may also waive the applicability of the adjusted gross income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for participating producers if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

(c) To achieve the conservation goals of CSP, NRCS will:

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

(2) Establish a science-based stewardship threshold for each priority resource concern at the level of management required to conserve and improve the quality and condition of a natural resource.

(d) During the period beginning on February 7, 2014, and ending on September 30, 2022, NRCS will, to the maximum extent practicable:

(1) Enroll in CSP an additional 10,000,000 acres for each fiscal year; and

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

(e) NRCS will develop State level technical, outreach, and program materials, with the advice of the State Technical Committee and local working groups, including:

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

(2) Identification of not less than five applicable priority resource concerns in particular geographic areas, or other appropriate regions within a State; and

(3) Identification of resource-conserving crops that will be part of resource-conserving crop rotations.

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

§ 1470.3 Definitions.

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

Agricultural operation means all eligible land, as determined by NRCS, whether contiguous or noncontiguous that is:

(1) Under the effective control of a producer at the time of enrollment in the program;
and

(2) Operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations.

Applicant means a producer who has requested in writing to participate in CSP.

Beginning farmer or rancher means a person or legal entity who:

(1) Has not operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of a legal entity who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of

the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agricultural (USDA), or designee.

Conservation activities mean conservation systems, practices, enhancements or management measures. The term conservation activities includes structural measures, vegetative measures, and land management measures, including agricultural drainage management systems as determined by NRCS, and planning needed to address a priority resource concern.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” “natural resource district,” or similar name.

Conservation practice means structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as Comprehensive Nutrient Management Plans, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management and other actions as approved by the Chief. Approved conservation practices are listed in the NRCS Field Office Technical Guide (FOTG).

Conservation stewardship plan means a plan developed in accordance with the requirements of § 1470.22.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is a binding agreement for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

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

Eligible land means:

(1) Private and tribal land on which agricultural commodities, livestock, or forest-related products are produced; and

(2) Upon which priority resource concerns could be addressed through a contract under the program. Eligible land includes cropland, grassland, rangeland, pastureland, nonindustrial private forest land, and other agricultural lands including cropped woodland, marshes, and agricultural land used or capable of being used for the production of livestock as determined by the Chief.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are equal to or greater than the performance

level for the quality criteria identified for a given resource concern. Quality criteria are defined for each resource concern in Section III-Conservation Management Systems, Field Office Technical Guide.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, quality criteria, and standards for planning and implementation of conservation practices. It contains detailed information on the quality standard to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared.

Historically underserved producer means a person, joint operation, legal entity, or Indian Tribes who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian lands means land held in trust by the United States for individual Indians or Indian Tribes, or all land titles held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or land which is subject to the rights of use, occupancy, and/or benefit of certain Indian Tribes. This term also includes lands for which the title is held in fee status by an Indian, Indian family, or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR part 1400, an entity created under Federal or State law that owns land or an agricultural commodity, product, or livestock; or produces an agricultural commodity, product, or livestock.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce Data).

(3) It also includes a legal entity or joint operation if all individual members independently qualify under paragraphs (1) and (2) of this definition.

Liquidated damages means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Management measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program established under the Organic Foods Production Act of 1990 ((7 U.S.C. 6501 et seq.), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of USDA which has responsibility for administering CSP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land, as determined by NRCS, that has existing tree cover or is suitable for growing trees, and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to maintain existing conservation activities to at least the level of conservation performance identified at the time of enrollment, and maintain additional conservation activities installed and adopted over the contract period. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the activity, repairing damage, replacement or restoration of the activity to its original condition if one or more components fail.

Participant means a producer that has entered into a CSP contract and is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

Payment means financial assistance provided to the participant under the terms of the CSP contract.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Priority resource concern means a natural resource concern or problem, as determined by NRCS, and is likely to be addressed successfully through implementation of conservation activities under this program. The term “applicable” priority resource concern means a resource concern identified by the State as a priority for a particular area of a State or region, and the term “other” priority resource concern means a resource concerns identified at the National level.

Producer means a person, legal entity, joint operation, or Indian Tribe who either has an interest in the agricultural operation or who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

Resource-conserving crop means a crop that is one of the following:

- (1) A perennial grass;
- (2) A legume grown for use as forage, seed for planting, or green manure;
- (3) A legume-grass mixture;
- (4) A small grain grown in combination with a grass, legume, forbs, grass-forbs mixture, whether inter-seeded or planted in rotation.

Resource-conserving crop rotation means a crop rotation that:

- (1) Includes at least one resource- conserving crop as determined by NRCS;

- (2) Reduces erosion;
- (3) Improves soil fertility and tilth;
- (4) Interrupts pest cycles; and
- (5) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities.

State Technical Committee means a committee established by the NRCS in a State pursuant to 7 CFR part 610, subpart C.

Stewardship threshold means the level of management required, as determined by NRCS, to conserve and improve the quality and condition of a natural resource.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

- (1) Technical services provided directly to farmers, ranchers, Indian Tribes, forest producers, and other eligible entities, such as conservation planning, technical consultation, preparation of forest stewardship management plans, and assistance with the design and implementation of conservation activities; and

(2) Technical infrastructure, including processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

§ 1470.4 Allocation and management.

(a) The Chief will allocate acres and associated funds to States:

(1) Based on the consideration of:

(i) Each State's proportion of eligible land to the total acreage of eligible land in all States:

(ii) The extent and magnitude of the conservation needs associated with agricultural production in each State,

(iii) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs, and

(iv) Other considerations determined by the Chief to achieve equitable geographic distribution of program funds.

(b) NRCS will allocate acres to ranking pools, to the extent practicable, based on the same factors the Chief considers in making allocations to States.

(c) Of the acres made available for each of fiscal years 2014 through 2018 to carry out CSP, NRCS will use, as a minimum:

(1) Five percent to assist beginning farmers or ranchers, and

(2) Five percent to assist socially disadvantaged farmers or ranchers.

(d) NRCS will provide priority under paragraph (c) to any producer who is a veteran farmer or rancher.

(e) NRCS may adjust the allocations to States in any fiscal year if it is determined an allocation cannot be utilized in a State. Additionally, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the adjustments or reallocation process, NRCS will consider several factors, including demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

§ 1470.5 Outreach activities.

(a) NRCS will establish program outreach activities at the national, State, and local levels to ensure that potential applicants who control eligible land are aware and informed that they may be eligible to apply for program assistance.

(b) Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, beginning farmers or ranchers, limited resource farmers or ranchers, and socially disadvantaged farmers or ranchers.

(c) NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.

§ 1470.6 Eligibility requirements.

(a) *Eligible applicant.* To apply for CSP, a producer must:

(1) Be the operator of an agricultural operation in the Farm Service Agency (FSA) farm records management system. Potential applicants who are not in the FSA farm records management system must establish records with FSA. Applicants whose records are not current in the FSA farm records management system must update those records prior to the close of the evaluation period to be considered eligible. NRCS may grant exceptions to the “operator of record” requirement for producers, tenants, landlords, sharecroppers, and owners in the FSA farm records management system that can demonstrate, to the satisfaction of NRCS, they will operate and have effective control of the land, that they share in the risk of producing a crop and are entitled to share in the crop available for marketing from the farm (or would have shared had the crop been produced), and that they are part of the daily management, administration, and performance of the operation and share in the risk;

(2) Have effective control of the land unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(3) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(4) Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors; conservation activity and production system records; information to verify the applicant's status as an historically underserved producer or a veteran farmer or rancher, if applicable; and payment eligibility as established by 7 CFR part 1400;

(6) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170; and

(7) Provide a list of all members of the legal entity or joint operation, as applicable, and embedded entities along with members' tax identification numbers and percentage interest in the legal entity or joint operation. Where applicable; American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payments.

(b) *Eligible land.* A contract application must include all of the eligible land on an applicant's agricultural operation. A participant may submit an application(s) to enter into an additional contract(s) for newly acquired or newly eligible land, which would then compete with other applications in a subsequent ranking period.

(c) *Ineligible land.* The following ineligible lands (even if covered by the definition of eligible land) are part of the agricultural operation, but ineligible for inclusion in the contract or for payment in CSP:

(1) Land enrolled in the Conservation Reserve Program (CRP), 7 CFR part 1410 unless—

(i) The conservation reserve contract will expire at the end of the fiscal year in which the land is to be enrolled in the program, and

(ii) Conservation reserve program payments for land enrolled in the program cease before the first program payment is made to the applicant under this subchapter;

(2) Land enrolled in a wetland reserve easement through the Agricultural Conservation Easement Program;

(3) Land enrolled in the Conservation Security Program, 7 CFR part 1469;

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

(5) Land used for crop production after February 7, 2014, the date of enactment of the Agricultural Act of 2014, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless the land does not meet such requirements because that land:

(i) Had previously been enrolled in CRP,

(ii) Has been maintained using long- term crop rotation practices as determined by the NRCS, or

(iii) Is incidental land needed for efficient operation of the farm or ranch as determined by NRCS.

§ 1470.7 Enhancements and conservation practices.

(a) Participant decisions describing the additional enhancements and conservation practices to be implemented under the conservation stewardship contract will be recorded in the conservation stewardship plan.

(b) NRCS will make available to the public the list of conservation activities available to be installed, adopted, maintained, and managed through the CSP.

(c) NRCS will make available bundled suites of conservation enhancements for participants to select voluntarily to include as part of their conservation stewardship plans. The bundles will be designed to coordinate the installation and adoption of enhancements with each other to address resource concerns in a more comprehensive and cost-effective manner.

(d) CSP encourages the use of other NRCS programs to install conservation practices that are required to meet agreed-upon stewardship thresholds, but the practices may not be compensated through CSP.

§ 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a technical service provider (TSP) as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is available and program specifications are appropriate so as not to limit producer participation because of size or type or operation or production system, including specialty crop and organic production. In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

(e) NRCS may utilize the services of State foresters and existing technical assistance programs such as the Forest Stewardship Program of the U.S. Forest Service, in coordinating assistance to NIPF owners.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Applicants may submit an application for the agricultural operation to enroll all of their eligible land into CSP on a continuous basis.

(b) *Stewardship threshold requirement.* To be eligible to participate in CSP, an applicant must submit to NRCS for approval, a contract offer for the agricultural operation that:

(1) Demonstrates that the applicant's conservation activities, at the time of contract offer, meet or exceed a stewardship threshold for at least two priority resource concerns; and

(2) Would, at a minimum, meet or exceed a stewardship threshold for at least one additional priority resource concern by the end of the conservation stewardship contract by:

(i) Installing and adopting additional conservation activities, and

(ii) Improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract application is accepted by NRCS;

(3) Provides a map, aerial photograph, or overlay that:

(i) Identifies the applicant's agricultural operation, and

(ii) Delineates eligible land with associated acreage amounts.

(c) *Evaluation of contract applications.* NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the first quarter of the fiscal year;

(2) In evaluating CSP applications, NRCS will rank applications based on the following factors, to the maximum extent practicable:

(i) Level of conservation treatment on all applicable priority resource concerns at the time of application,

(ii) Degree to which the proposed conservation activities effectively increase conservation performance,

(iii) Number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract,

(iv) Extent to which other priority resource concerns will be addressed to meet or exceed the stewardship threshold by the end of the contract period, and

(v) Extent to which priority resource concerns will be addressed when transitioning from the conservation reserve program to agricultural production;

(3) In the event that application ranking scores from paragraph (2) above are similar, the application that represents the least cost to the program will be given higher priority; and

(4) NRCS may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(d) *Weighting of ranking factors.* The weight given to each ranking factor may be adjusted to achieve program objectives, as determined by the Chief.

(e) *National, State, and local priorities.* The Chief may develop and use additional criteria that are determined necessary to ensure that national, State, and local priority resource concerns are effectively addressed.

(f) *Ranking pools.* Ranking pools will be established in accordance with § 1470.2(e)(1).

(1) NIPF will compete in ranking pools separate from other eligible land. An applicant with both NIPF and other eligible land will submit one application for NIPF and one application for all other eligible land.

(2) An applicant with an agricultural operation that crosses ranking pool boundaries will make application and be ranked in the ranking pool where the largest acreage portion of their operation occurs.

(3) Within each State or established ranking pool, NRCS will address conservation access for certain farmers or ranchers, including:

- (i) Socially disadvantaged farmers or ranchers,
- (ii) Beginning farmers or ranchers, and
- (iii) Producers who are veteran farmers or ranchers.

(g) *Application pre-approval.* NRCS will make application pre-approval determinations during established ranking periods based on eligibility and ranking score.

(h) *Field verification.* NRCS will conduct onsite field verification prior to entering into an agreement to substantiate the accuracy of the information provided by pre-approved applicants during the application process.

§ 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be developed in accordance with § 1470.22, NRCS will enter into a

conservation stewardship contract with the participant to enroll all of the eligible land on a participant's agricultural operation.

(b) The conservation stewardship contract will:

(1) Provide for payments over a period of 5 years;

(2) Incorporate by reference the conservation stewardship plan;

(3) State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;

(4) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Implement the conservation stewardship plan as described in § 1470.22,

(ii) Operate and maintain conservation activities on the agricultural operation consistent with § 1470.23,

(iii) Comply with the terms of the contract or documents incorporated by reference into the contract,

(iv) Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with § 1470.27,

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the

transferee of the right and interest agrees to assume all obligations of the contract, consistent with § 1470.25,

(vi) Maintain and supply information as requested by NRCS, to determine compliance with the conservation stewardship plan and any other requirements of the program, and

(vii) Not to conduct any activities on the agricultural operation that would tend to defeat the purposes of the program;

(5) Permit all economic uses of the eligible land that:

(i) Maintain the agricultural or forestry nature of the land, and

(ii) Are consistent with the conservation purposes of the contract;

(6) Include a provision to ensure that a participant will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including a disaster or related condition, as determined by NRCS; and

(7) Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

§ 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the National Planning Procedures Handbook to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved

under the conservation stewardship contract. The plan will describe the program purposes to be achieved through one or more conservation activities.

(c) Associated supporting information maintained with the participant's plan will include:

(1) Documentation that will be the basis for:

(i) Identifying and inventorying priority resource concerns,

(ii) Establishing benchmark data on the condition of existing conservation activities,

(iii) Describing conservation activities to be implemented, managed, or improved, and

(iv) Documenting the participant's conservation objectives to reach and exceed stewardship thresholds;

(2) A plan map delineating the land area identified and included in the program contract with associated acreage amounts;

(3) In the case where a participant wishes to initiate or retain organic certification, documentation that will support the participant's transition to or participation in the National Organic Program; and

(4) Other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

The participant will maintain and manage existing conservation activities across the entire agricultural operation to at least the level of conservation performance identified at the time of enrollment for the conservation stewardship contract period, and additional activities installed and adopted over the term of the conservation stewardship contract.

§ 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide, as appropriate, annual payments under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract offer is accepted by NRCS. A split-rate annual payment structure is used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation.

(1) To receive annual payments, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one additional conservation activity must be scheduled, installed, and adopted in the first fiscal year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third fiscal year of the contract. Installed enhancements must be maintained for the remainder of the contract period and adopted enhancements must recur for the remainder of the contract period.

(ii) At a minimum, maintain activities to the level of existing conservation performance identified at the time of enrollment for the conservation stewardship contract period, and

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

(3) A participant's annual payments will be determined using the conservation performance computed by land-use type for eligible land earning payments. Conservation performance is prorated over the contract term so as to accommodate, to the extent practicable, participants earning equal annual payments in each fiscal year;

(4) The annual payment rates will be based to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training,

(ii) Income foregone by the participant,

(iii) Expected conservation benefits,

(iv) The extent to which priority resource concerns will be addressed through the installation and adoption of conservation activities on the agricultural operation,

(v) The level of stewardship in place at the time of application and maintained over the term of the contract,

(vi) The degree to which the conservation activities will be integrated across the entire agricultural operation for all applicable priority resource concerns over the term of the contract, and

(vii) Such other factors as determined by the Chief.

(5) The annual payment will accommodate some participant operational adjustments.

(i) Enhancements may be replaced with similar enhancements without adjustment of annual payment as long as the conservation performance is determined by NRCS to be equal to or better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will be considered a violation of the contract, and

(ii) Adjustments to existing activities may occur consistent with conservation performance requirements from § 1470.23; and

(6) Conservation activities may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt or improve a resource-conserving crop rotation as defined by NRCS to achieve beneficial crop rotations as appropriate for the eligible land of the participant.

(1) NRCS will determine whether a resource-conserving crop rotation is eligible for supplemental payments based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits;

(2) A participant must adopt or improve the resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-

third of the rotation acres. The resource-conserving crop must be adopted by the third fiscal year of the contract and planted on all rotation acres by the fifth fiscal year of the contract; and

(3) The supplemental payment is to encourage a producer to adopt or improve a resource-conserving crop rotation and will be based, to the maximum extent practicable, on the factors from § 1470.24(a)(4).

(c) *Minimum contract payment.* NRCS will make a minimum contract payment to participants who are historically underserved producers, at a rate determined by the Chief in any fiscal year that a contract's payment amount total is less than \$1,000.

(d) *Timing of payments.* NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. For newly enrolled contracts, payments will be made as soon as practicable after October 1 following the fiscal year of enrollment.

(e) *Noncompensatory matters.* A CSP payment to a participant will not be provided for:

(1) New conservation activities applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities, or associated waste transport or transfer devices for animal feeding operations; or

(3) Conservation activities for which there is no cost incurred or income foregone by the participant.

(f) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$40,000 during any fiscal year for all CSP contracts

entered into, and \$200,000 under all CSP contracts entered into during fiscal years 2014 through 2018, excluding funding arrangements with Indian tribes, regardless of the number of contracts entered into under the CSP by the person or legal entity. NRCS may waive the annual payment limitations in this section where NRCS determines that due to circumstances beyond the participant's control, payment for implementation for a fiscal year's activities cannot be made as scheduled under the CSP contract.

(g) *Contract limits.* Each conservation stewardship contract will be limited to \$200,000 over the term of the initial contract period, except that conservation stewardship contracts with joint operations will be limited to \$80,000 per fiscal year and \$400,000 over the term of the initial contract period.

(h) *Payment and contract limitation provisions for individual Indians and Indian Tribes.* Payment limitations apply to individual tribal member(s) when applying and subsequently being granted a contract as an individual(s). Contracts with Indian Tribes are not subject to payment or contract limitations. Indian Tribes and BIA will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of enrollment will cover the entire contract period. The Tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations.

(i) *Tax Identification Number.* To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an

applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage of interest in the joint operation or legal entity. Payments will be directly attributed to legal entity members for the purpose of complying with § 1470.24(f). Applicant applying as a joint operation must provide an EIN for the joint operation to qualify for the contract limit available under § 1470.24(g).

(j) *Unique tax identification numbers.* American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for all CSP contracts to which the participant is a party.

§ 1470.25 Voluntary contract modifications and transfers of land.

(a) NRCS may modify a conservation stewardship contract, if:

- (1) The participant agrees to the modification, and
- (2) NRCS determines the modification is in the public interest.

(b) NRCS may allow modification to a conservation stewardship contract to accommodate certain changes in the agricultural operation, such as to remove contract acres to be enrolled in CRP, protected by a wetland reserve easement through ACEP, or enrolled in other Federal or State programs that offer greater natural resource protection through an easement, long-term contract, land use restrictions, or similar authority as determined by NRCS. Payments for such modified contracts will be reduced to reflect the modified acreage and performance.

Participants will not be subject to liquidated damages or refund of payments received for enrolling land in these programs. NRCS may also approve modification to a conservation stewardship contract to accommodate other limited changes on land that the participant has effective control in response to a participant's request made prior to implementing the change that would take land out of production or convert an area under contract to a different land use. Prior to approval, NRCS must determine that any modification under this section is authorized by the provisions of 16 U.S.C. 3838d–3838g.

(c) A voluntary contract modification under this section will not increase the scheduled annual payments under the program, except to implement an appeal determination or correct an administrative error as approved by NRCS. Successor in interest or other changes made to the structure of an operation are subject to this limitation on contract agreement.

(d) Land under contract will be considered transferred if the participant loses control of the acreage for any reason.

(1) The participant is responsible to notify NRCS prior to any voluntary or involuntary transfer of eligible land under contract;

(2) If all or part of the eligible land under contract is transferred, the contract terminates with respect to the transferred land unless:

(i) The transferor of the land provides written notice within 60 days to NRCS that all duties and rights under the contract have been transferred to, and assumed by, the transferee for the portion of the land transferred, and

(ii) The transferee meets the eligibility requirements of the program, and

(iii) NRCS approves the transfer of all duties and rights under the contract.

§ 1470.26 Contract renewal.

(a) At the end of the initial 5-year contract period, NRCS may allow a participant to renew the contract to receive payments for one additional 5-year period, subject to the availability of funds, if the participant meets criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must:

(1) Be in compliance with the terms of their initial contract as determined by NRCS;

(2) Add any newly acquired eligible land that is part of the agricultural operation that NRCS determines must be included in the renewal contract, except that any newly enrolled acres will be included in the yearly annual 10 million acre cap on new enrollment;

(3) Agree to adopt and continue to integrate conservation activities across the entire agricultural operation as determine by NRCS; and

(4) Agree, at a minimum, to meet or exceed the stewardship thresholds for at least two additional applicable priority resource concerns on the agricultural operation; or to exceed the stewardship threshold of two existing applicable priority resource concerns that are specified by the Chief in the initial contract by the end of the renewed contract period.

§ 1470.27 Contract violations and termination.

(a) NRCS may terminate a contract:

(1) Without the consent of the participant where it determines that the participant:

(i) Violated the contract; or

(ii) Is unable to comply with the terms of the contract as the result of conditions beyond their control.

(2) With the consent of the participant if NRCS determines that the termination is in the public interest.

(b) NRCS may allow a participant in a contract terminated in accordance with the provisions of paragraph (a) of this section, to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. The condition that is the basis for the participant's inability to comply with the contract must not have existed at the time the contract was executed by the participant. If a participant believes that such a hardship condition exists, the participant may submit a request with NRCS for relief pursuant to this paragraph and any such request must contain documentation sufficient for NRCS to make a determination that this hardship condition exists.

(c) If NRCS determines that a participant is not in compliance with the contract terms or documents incorporated therein, NRCS will notify the participant about the actions the participant must take to be determined in compliance and the consequences of the failure to remedy the violation. NRCS will provide a reasonable period of time for the participant to complete all necessary actions, not to exceed one year. NRCS may authorize an additional period of time if NRCS determines that the participant is willing and able to comply but has not been able to complete the necessary actions during the initial period of time as a result of

conditions beyond their control. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1470.36; or

(3) Incurred in a violation of the contract provisions that cannot be corrected in a timeframe established by NRCS.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation activity has achieved the expected conservation performance improvement, is not adversely affected by the violation or the absence of other conservation activities that would have been installed under the contract, and has met the associated operation and maintenance requirement of the activity; and

(2) NRCS will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case when terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the

participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by NRCS. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1470.31 Appeals.

A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation activities are not subject to appeal.

§ 1470.32 Compliance with regulatory measures.

Participants will be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants will be responsible

for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

§ 1470.33 Access to agricultural operation.

NRCS, or its authorized representative, will have the right to enter an agricultural operation for the purpose of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access will include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS, or its authorized representative, will make an effort to contact the participant prior to the exercise of this provision.

§ 1470.34 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. The financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

(b) If a participant has been found in violation of a provision of the conservation stewardship contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

§ 1470.35 Offsets and assignments.

(a) Any payment or portion thereof due to any participant under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.

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

§ 1470.36 Misrepresentation and scheme or device.

(a) If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be determined ineligible immediately.

(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(c) A participant will refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such participant with respect to all CSP contracts if they are determined to have:

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

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(d) Participants determined to have committed actions identified in paragraph (c) of this section will have their interest in all CSP contracts terminated.

§ 1470.37 Environmental credits for conservation improvements.

(a) A participant in CSP may achieve environmental benefits that qualify for environmental credits under an environmental credit-trading program. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that CSP purposes are met. In addition, any requirements or standards of an environmental market program in which a CSP participant simultaneously enrolls to receive environmental credits must be compatible with the purposes and requirements of the CSP contract and with this part.

(b) The participant must meet all operation and maintenance (O&M) requirements for CSP-funded activities, consistent with §§ 1470.21 and 1470.23. Where activities required under an environmental credit agreement may affect the land and conservation activities under a CSP contract, NRCS recommends that CSP participants request assistance with the development of a compatibility assessment prior to entering into any credit agreement. The CSP contract may be modified in accordance with policies outlined in § 1470.25 provided the modification meet CSP purposes and is in compliance with this part.

(c) CSP participants may not use CSP funds to implement conservation practices and activities that the participant is required to establish as a result of a court order.

Signed this 31 day of October, 2014, in Washington, D.C.

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

[FR Doc. 2014-26295 Filed 11/04/2014 at 8:45 am; Publication Date: 11/05/2014]