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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

[Docket No. NRCS-2019-0020]

RIN 0578-AA67

Conservation Stewardship Program (CSP) Interim Rule

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Interim rule.

SUMMARY: This interim rule with request for comment amends the existing regulation for CSP to incorporate programmatic changes as authorized by amendments in the Agriculture Improvement Act of 2018 (2018 Farm Bill).

DATES: *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*].**

Comment date for Environmental Review: Submit comments on the draft Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) on or before **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*].**

ADDRESSES: We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of notice. You may submit comments by the following methods:

- *Federal eRulemaking Portal*: Go to <https://www.regulations.gov/> and search for Docket ID NRCS-2019-0020. Follow the online instructions for submitting comments.

All written comments received will be publicly available on <http://www.regulations.gov>.

A copy of the draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from either of the following web sites:

www.regulations.gov or

<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecosciences/ec>. A

hard copy may also be requested in one of the following ways:

- Via mail: karen.fullen@usda.gov with “Request for EA” in the subject line; or
- A written request: Karen Fullen, Environmental Compliance Specialist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Sarah Brooks; phone: (720) 544-2825; or email: sarah.brooks@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Discussion of Conservation Stewardship Program (7 CFR part 1470)

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) amended the Food Security Act of 1985 to establish CSP and authorize the program in fiscal years

(FY) 2009 through 2013. The Agricultural Act of 2014 (2014 Farm Bill) reauthorized and revised CSP through FY 2018. NRCS promulgated an interim rule on November 5, 2014, and subsequently made final those changes on March 10, 2016, through issuance of a final rule. The Agriculture Improvement Act of 2018 (2018 Farm Bill) moved CSP from subchapter B of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 to a new subchapter B of chapter 4 of subtitle D of title XII of the Food Security Act of 1985, and then repealed subchapter B of chapter 2 as amended.

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, Natural Resources Conservation Service (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 land capable of being used for the production of livestock) on which resource concerns related to agricultural production could be addressed. Eligible lands also include lands associated with these private or Tribal agricultural lands on which a priority resource concern can be addressed through a CSP contract. Participation in the program is voluntary.

CSP encourages land stewards to improve their conservation performance by installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities on eligible land. NRCS accepts applications for CSP at any time, but specifically identifies one batching cutoff period in the first quarter of each fiscal year. NRCS then ranks and makes funding decisions based on the applications received on or before the established cutoff date. Depending upon the availability of funds or whether there existed sufficient competition amongst high quality applications during the first ranking and selection period, NRCS can establish additional ranking and selection periods during the remainder of the fiscal year.

NRCS continues to streamline and coordinate administration of both CSP and the Environmental Quality Incentives Program (EQIP) as directed by the 2018 Farm Bill. Through this effort, NRCS has evaluated several administrative processes in order to establish standard methodologies for both programs. Some examples include: using payment schedules to develop the payment rates for all conservation practices and activities used by the programs; tying all enhancements to NRCS conservation practice standards; using Farm Service Agency (FSA) records to ensure that program participants represent themselves the same way across all USDA programs; aligning payment and modification processes to the greatest extent possible recognizing that CSP has certain statutory requirements for annual payment timing; and requiring implementation of at least one new conservation practice or activity within the first 12 months of the contract.

In addition, CSP and EQIP work in a complementary manner to address conservation issues associated with agricultural operations. While EQIP focuses on the implementation of conservation practices at the field level to address specific natural

resource concerns, CSP emphasizes the use of conservation activities, which include practices, enhancements, and bundles, implemented at the agricultural operation level. Conservation practices have a conservation practice physical effect (CPPE) score that provides a measure of the positive or negative effect of the practice on any given resource concern. Similarly, NRCS has developed enhancement physical effect (EPE) scores for each enhancement that provide a measure of environmental benefit for each resource concern.

NRCS also recognizes that not all enhancements will achieve the same benefit with respect to a specific resource concern and the agency continues to move toward quantifying the benefits based upon scientific information made available through Conservation Effects and Assessment Project (CEAP) studies. A producer who installs conservation practices under EQIP to meet one or more resource concerns is then better positioned to meet the CSP stewardship threshold. NRCS encourages a producer enrolled in CSP to achieve increased environmental benefits through the adoption of conservation activities that focus on increased positive impacts to a specific resource concern as documented by the EPE score. 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: (1) Subpart A—General Provisions, (2) Subpart B—Contracts, and (3) Subpart C—General Administration. Below is a summary of the changes made to each subpart based upon the changes made to CSP by the 2018 Farm Bill.

The 2018 Farm Bill made the following changes to CSP program requirements:

- Confirms validity of CSP contracts entered into prior to 2018 Farm Bill enactment, authorizes the ability to extend contracts that are due to expire on or before December 31, 2019, and authorizes renewal of such contracts through the new CSP authority.
- Defines new terms and adjusts existing terms, such as expanding the definition of “conservation activities” and defining the term “comprehensive conservation plan.”
- Simplifies CSP ranking criteria and requires that both new contracts and contract renewals be ranked based on those criteria.
- Requires that if two or more applications receive the same ranking, they be ranked on the extent to which actual and anticipated conservation benefits from each contract are provided at the lowest cost relative to other similarly beneficial offers.
- Provides opportunity for participants to renew their contracts in the first half of the fifth year of the 5-year contract.
- Bases program allocations on funds rather than acres and eliminates the requirement that NRCS administer the program at \$18 per acre average nationally.
- Incentivizes certain activities, including authorizing payment for cover crop activities at not less than 125 percent of the annual payment amount, and authorizes a supplemental payment for advanced grazing management

or resource-conserving crop rotations at not less than 150 percent of the annual payment amount.

- Provides a one-time payment to participants who agree to develop a comprehensive conservation plan.
- Continues a \$200,000 payment limitation for individuals and legal entities for all contracts entered into during FY 2019 through 2023.
- Requires that States be given an allocation to support organic production based on the certified and transitioning organic operations of the State and the number of certified and transitioning organic acres of the State.
- Requires that CSP be streamlined and aligned with EQIP, including applications, contracting, conservation planning, conservation practices, and related administrative procedures.
- Requires that to the greatest extent practicable, the program should be managed to enhance soil health.
- Requires NRCS to submit an annual report to Congress on payment rates along with an analysis of whether payment rates can be reduced for the most expensive conservation activities.
- Authorizes a CSP-Grasslands Conservation Initiative to help producers with certain base acres in protecting grazing land uses, conserving and improving soil, water and wildlife resources and waives several program requirements to facilitate enrollment under the initiative.
- Authorizes funding for CSP at—
 - \$700 million for FY 2019

- \$725 million for FY 2020
- \$750 million for FY 2021
- \$800 million for FY 2022
- \$1 billion for FY 2023

NRCS is making the following mandatory and discretionary changes to the CSP regulation based upon these changes made by the 2018 Farm Bill:

Mandatory Changes—

- Removes regulatory language that addressed CSP implementation under the Regional Conservation Partnership Program (RCPP) since the 2018 Farm Bill removed the requirement that RCPP be implemented through CSP and the other “covered programs.” (See § 1470.2(b).)
- Removes reference to acreage cap and dollar amount per acre limit (See § 1470.2(d).)
- Adds the following definitions to reflect statutory changes: advanced grazing management, comprehensive conservation plan, and management-intensive rotational grazing. (See § 1470.3.)
- Adds a new paragraph to address State organic allocations which will be based on the number of organic and transitioning-to-organic operations in a State and the number of organic and transitioning-to-organic acres in a State. (See § 1470.4(b).)
- Requires that if two or more applications receive the same ranking, they be ranked on the extent to which actual and anticipated conservation

benefits from each contract are provided at the lowest cost relative to other similarly beneficial offers. (See § 1470.24(c).)

- Adds advanced grazing management as another type of supplemental payment. (See § 1470.24(b).)
- Includes language for the one-time payment option for development of a comprehensive conservation plan. (See § 1470.24(c).)
- Incorporates language about opportunity for participants to renew their contracts in the first half of the fifth year of the 5-year contract. (See § 1470.26(a).)
- Outlines the requirements and parameters of CSP-GCI. (See § 1470.28.)

Discretionary Changes—

- Removes identification of Chief as a Vice President of the Commodity Credit Corporation. (See § 1470.2(a).)
- Modifies existing terms to reflect changes in terminology, to more closely align CSP program administration with EQIP, and for clarity. (See § 1470.3.) These include, but are not limited to—
 - Modifying “eligible land” to include public land when the land is a working component of the participant’s agricultural or forestry operation.
 - Modifying the definition of “veteran farmers or ranchers” to cite the statutory reference in the 2018 Act.
 - Clarifying “enhancement”, “participant”, and “stewardship threshold.”

- Specifies eligibility requirements for all applicants sharing in the risk and participating in day-to-day activities. (See § 1470.6(a).)
- Expands the potential scope of bundles and provides NRCS with discretionary authority for offering bundles. (See § 1470.7(c).)
- Removes the requirements associated with an operation crossing ranking pool boundaries to increase applicant flexibility. (See § 1470.20(d).)
- Adds organic producers or producers transitioning to organic as a category of producer with a targeted ranking pool. (See § 1470.20(d).)
- Clarifies the annual payment structure and adjusted the timeframe for implementing the first conservation activity to align with EQIP. (See § 1470.24(a).)
- Adds language stating that, unless a waiver is granted, participants will not receive payment for conservation activities initiated or implemented prior to contract approval. (See § 1470.24(f).)
- Expands the regulatory \$400,000 contract limit for all joint operations. (See § 1470.24(h).)
- Adds language to allow for contract increases due to minor adjustments made to conservation activities at the discretion of NRCS. (See § 1470.25(c).)
- Modifies language to provide greater consideration to a participant's circumstances with respect to operational changes. (See § 1470.25(b).)

Adds language to address contract changes that arise due to the death, incompetence, or disappearance of a program participant.

(See § 1470.25(h).)

- Includes an eligibility restriction for renewal-eligible participants who choose not to renew in favor of competing for a new contract. (See § 1470.26(c).)
- Removes language related to training NRCS staff. (See § 1470.8(c).)
- Adjusts definitions to conform to those in other NRCS or Department regulations. (See § 1470.3.)

USDA 2018 Farm Bill Listening Session

On February 14, 2019, the Farm Service Agency (FSA), NRCS, and the Risk Management Agency (RMA) published a notice in the *Federal Register* (84 FR 4041-4044) announcing a listening session for initial public input on the changes to existing programs implemented by the agencies. Each agency will take into account stakeholder input when making discretionary decisions on program implementation. The agencies also announced an opportunity for the public to make written statements through March 1, 2019. The listening session was held on February 26, 2019. The Commodity, Credit, and Crop Insurance titles, and parts of the Conservation, Energy, and Miscellaneous titles were covered during the listening session.

FSA, NRCS, and RMA received 183 written comments from individuals, trade groups, other organizations, and State entities. All written comments are available to the public for review at: <https://www.regulations.gov/document?D=USDA-2019-0001-0001>. In addition to program-specific comments, there were recurring overarching comments

about placing a priority on information sharing between agencies for data collection regarding soil health and conservation practices.

Among the comments submitted concerning CSP, NRCS received 20 comments related to program delivery and administration. Numerous comments called for the immediate start of the sign-up period for CSP and for more flexibility on eligibility requirements involving land control, lower-cost practices, and past participation in other conservation programs. Some comments emphasized consideration of local priorities and protection of treaty-reserved resources in identifying resource concerns. Other comments focused on increased payments for practices associated with soil health, cover crops, resource-conserving crop rotations, and advanced grazing management.

NRCS also received five comments that underlined the adoption of robust conservation management activities under the initiative. Other comments sought for clear guidance on program eligibility and effective outreach to producers regarding enrollment options.

NRCS received three comments on the funding allocation to support organic production and transition to organic production. Two of the comments recommended that the allocation formula be based on the current Farm Bill and on feedback from States regarding projected demand from organic and transitioning farmers. The other comment stressed the need for additional financial support and technical assistance among transitioning organic farmers.

NRCS received a couple comments on reevaluating the definition of resource-conserving crop rotation to include the required use of perennial grass or legume and

rotations of annual crops, such as sorghum. Another comment recommended that the resource-conserving crop rotation be included in the FY 2019 sign up.

Finally, NRCS received two comments on prioritizing incentives for practices that improve soil health: one comment supporting the development of conservation enhancements for advanced grazing management, and one comment requesting guidance on practices that can be implemented under CSP that will help in coping with weather volatility.

NRCS evaluated the changes made by the 2018 Farm Bill and the comments received during the listening session and is hereby promulgating this interim rule with request for comments to incorporate the 2018 Farm Bill changes to CSP program administration and make other adjustments based on public comment. This action is pursuant to section 1246 of the Food Security Act of 1985 which requires implementation of title XII of the Food Security Act through an interim rule with request for comments. Section 2504 of the 2018 Farm Bill states that NRCS may implement the Farm Bill conservation provisions under their current regulations to the extent that such regulations are consistent with the 2018 Farm Bill provisions. This interim authority enabled NRCS to hold CSP program enrollment in FY 2019. It expires September 30, 2019.

Subpart A—General Provisions

§ 1470.1 Applicability.

This section sets forth the policies, procedures, and requirements of CSP. In paragraph (a), NRCS clarifies that contracts entered into prior to the 2018 Farm Bill are administered according to the CSP regulation in effect prior to enactment, and that

contracts entered into after enactment of the 2018 Farm Bill will be administered under these regulations.

§ 1470.2 Administration.

This section describes the roles of NRCS at the National and State levels.

Paragraph (a) was changed to remove reference to the NRCS Chief being an officer of the Commodity Credit Corporation. When USDA established the Farm Production and Conservation (FPAC) Mission Area, officer positions were delegated to the mission area Under Secretary and the FPAC Business Center Chief Operating Officer.

Paragraph (b) is revised to remove any reference to the Regional Conservation Partnership Program, which will have its own regulations and fiscal allocations consistent with the 2018 Farm Bill. NRCS removed paragraph (d) because CSP no longer has an acreage cap, nor is it limited to any dollar amount per acre. Subsequent paragraphs were redesignated accordingly. NRCS amended redesignated paragraph (d)(2) to remove the “applicable” modifier for priority resource concerns to improve readability. NRCS added paragraph (d)(4) to cover new information related to advanced grazing management.

§ 1470.3 Definitions.

This section sets forth definitions for terms used throughout this regulation. The following definitions have been added to reflect changes made by the 2018 Farm Bill: advanced grazing management, comprehensive conservation plan, and management-intensive rotational grazing.

The term conservation activities was modified to include several additional examples consistent with the 2018 Farm Bill.

The term conservation practice was modified to reflect the technical definition used in other NRCS manuals.

The term effective control was modified for clarity.

The term eligible land was modified to include privately controlled public land when the land is a working component of the participant's agricultural or forestry operation. The CSP statute identifies that eligible land includes lands associated with the producer's private or Tribal agricultural or forestry operation provided that priority resource concerns could be addressed through a contract under the program on that associated land. NRCS has interpreted that this language regarding associated lands allows producers to enroll the public land components of their overall agricultural or forestry operation, if such land is managed as part of the private or Tribal producer's operation pursuant to a long-term lease from a public agency and the enrollment of the land will contribute to an improvement in an identified priority resource concern. NRCS makes this change to align CSP program administration more closely with EQIP as required by the 2018 Farm Bill.

The terms enhancement and field office technical guide were modified to reflect a change in terminology from "quality criteria" to "planning criteria".

The term historically underserved producer was modified to include veteran farmers or ranchers.

The term participant was modified to clarify that a participant must first apply and be accepted into the program to qualify as a participant.

The term priority resource concern was simplified by removing the additional qualifiers of “applicable” and “other” and thus aligns the term more closely with the statutory definition and improves readability of the regulation.

The term resource-conserving crop rotation was modified to add “building soil organic matter” as a requirement. The term resource-conserving crop was modified to clarify that NRCS determines whether a crop is resource conserving, and expanded the definition to include a small grain or “other resource-demanding” crop grown in combination with a grass, legume, forbs, or grass-forbs mixture.

The definition of stewardship threshold was modified to delineate the means by which the stewardship threshold may be reached.

The definition of technical assistance was modified to remove the specific reference to development of forest stewardship plans. The intent was simply to broaden the language to encompass all plans, including the new plans authorized under the 2018 Farm Bill, and the development of forest stewardship plans remains encompassed within the definition of technical assistance.

The definition of technical service provider was modified to be consistent with the potential for a technical service provider to be certified through a third-party certifying organization.

The definition of veteran farmer or rancher was modified to correctly cite the statutory reference as amended by the 2018 Farm Bill.

§ 1470.4 Allocation and management.

This section addresses national allocations and how the proportion of eligible land will be used as the primary means to distribute CSP funds among States. The NRCS

Chief has discretionary authority to adjust the weighting of the statutorily prescribed allocation factors to better distribute funds and address program purposes. NRCS seeks public comment on the weighting of the statutory factors and whether other factors should be considered to achieve equitable geographic distribution of program funds or enhance environmental benefits realized through the program. This section has been modified to address the change in the CSP program from an acre-based program to a dollar-based program by the 2018 Farm Bill. References to acreage have been removed from this section and language has been modified to clarify that allocations of funding are not tied to any acreage cap. NRCS removed paragraph (d) that identified veteran farmer or rancher priority since veteran farmer or rancher access, which includes prioritization, is addressed through § 1470.20. NRCS revised paragraph (b) to address State organic allocations as required by statute which will be based on the number of organic and transitioning-to-organic operations in a State and the number of organic and transitioning-to-organic acres in a State.

§ 1470.5 Outreach activities.

This section addresses NRCS outreach activities. NRCS has made minor editorial adjustments to this section to improve clarity by using the term historically underserved producers.

§ 1470.6 Eligibility requirements.

This section sets forth the criteria for determining applicant and land eligibility. The CSP statute identifies that producers with effective control of the land are eligible to participate. Since 2010, the CSP regulation required that the producer be the operator of record in the Farm Service Agency (FSA) farm records system but allowed NRCS to

waive the operator of record requirements. While this regulatory requirement seemed to provide a clear standard for determining producer eligibility, given the variety of agricultural operations and land tenancy it resulted in creating unnecessary administrative hurdles for many otherwise eligible producers to participate. Therefore, NRCS expanded paragraph (a)(1) to include owners and other tenants as identified in the FSA farm records system as potential eligible applicants and removed the operator of record waiver authority as the waiver is no longer needed. NRCS believes that this change will improve customer service, simplify the application and contracting process, and reduce the burden on field office staff.

Further, NRCS redesignated paragraphs (a)(2) through (5) as paragraphs (a)(3) through (6) and inserted a new paragraph (a)(2) to specify eligibility requirements for all applicants related to sharing in the risk and participating in the day-to-day management of the operation. In paragraph (a)(6), NRCS removed the reference to veteran farmers or ranchers as redundant since the term farmer and rancher is incorporated into the term historically underserved producer. NRCS removed reference to Conservation Security Program contracts as there are no longer any active contracts under the repealed program.

The CSP statute defines eligible land as “private or tribal land on which agricultural commodities, livestock, or forest-related products are produced” and includes “associated lands.” Western producers often lease or have a permit to use public land as part of their operation and have been discouraged from participating in CSP even though such lands are an integral part of their operation. NRCS has amended the CSP regulatory definition of eligible land to allow the enrollment of public lands that are associated with eligible land under the effective control of the producer as part of their private

agricultural operation. This change provides consistency with EQIP program administration since EQIP currently allows public lands that are part of a private producer's operation to be enrolled in an EQIP contract. Because of the inclusion of public land under the definition of eligible land, NRCS removed paragraph (c)(4) which previously identified public lands as ineligible. In paragraph (c)(3), the dates were modified to address the scope of the 2018 Farm Bill.

§ 1470.7 Conservation activities.

This section describes the range of activities and practices covered by CSP. The name of this section was updated for simplification to incorporate conservation practices, enhancements and bundles. Previously, § 1470.7 identified that NRCS will make available bundled suites of conservation enhancements for participants to select voluntarily to include as part of their conservation stewardship plans. These “bundled suites of conservation enhancements” included multiple enhancements whose installation as a group was designed to improve conservation performance and address resource concerns in a more comprehensive and cost-effective manner. NRCS modified paragraph (c) to expand the potential scope of bundles to include both practices and enhancements by using the term “conservation activity” as defined in § 1470.3. NRCS also adjusted the language to allow the agency discretion in offering bundles as there may be particular contexts where bundling of activities will not improve conservation performance. NRCS removed paragraph (d) that encouraged the use of other NRCS programs to implement conservation practices to meet agreed-upon stewardship levels, though not compensated under CSP, due to programmatic changes that now allow broader practice implementation and compensation under CSP.

§ 1470.8 Technical and other assistance.

This section explains that NRCS or other technical service providers (TSPs) not directly affiliated with NRCS could provide the technical consultation for installing conservation activities under CSP. NRCS modified paragraph (c) to remove language related to training NRCS staff as this is an internal agency administrative matter.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

This section identifies procedures associated with contract application requirements, the application evaluation process, and application acceptance. NRCS intends to continue evaluating applications based on the level of expected environmental benefit achieved through adoption of additional conservation activities. Currently, NRCS provides higher ranking points to applicants who agree to adopt more conservation activities in order to meet or exceed the stewardship threshold of a higher number of resource concerns, agree to adopt the additional conservation activities over a greater percentage of their operation, adopt bundles, and adopt conservation activities that target wildlife habitat improvement and soil health. NRCS also uses an efficiency score component in the ranking which considers the environmental benefit associated with an applicant's planned additional conservation activities and the costs associated with implementing these activities. In this way, NRCS prioritizes applications that will provide higher levels of conservation and environmental benefits across the agricultural or forestry operation. NRCS amended paragraph (c) to incorporate the new criteria established in the 2018 Farm Bill. NRCS removed the discretionary provision related to weighting of ranking factors as this determination is more administrative rather than

regulatory in nature. NRCS incorporated the language regarding national, state and local priorities into paragraph (c)(2)(iii). In paragraph (d), NRCS removed the requirements associated with an operation crossing ranking pool boundaries to increase applicant flexibility. NRCS establishes ranking pools based on watersheds, geographic areas, or other high priority areas within a State or region. Nationally, NRCS requires States to establish separate ranking pools for beginning farmer or ranchers, socially disadvantaged farmer or ranchers, and through the 2018 Farm Bill, organic producers or producers transitioning to organic. In addition, NRCS may establish national or State initiatives which would have a unique ranking pool. NRCS continues to provide priority to veteran farmers or ranchers within the beginning farmer or rancher or socially disadvantaged farmer or rancher ranking pools. NRCS modified paragraph (e) to authorize NRCS to make application determinations throughout the fiscal year to provide additional flexibility to program administration. Similarly, NRCS modified paragraph (f) to use consistent terminology with respect to CSP contracts.

§ 1470.21 Contract requirements.

This section 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 modifies this section only to improve the clarity of language.

§ 1470.22 Conservation stewardship plan.

This section 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 modifies this section to consolidate duplicative information and to ensure consistent language is used throughout this part. This section was also modified to remove reference to documentation that is addressed as part of NRCS actions, including documentation related to meeting or exceeding the applicable stewardship thresholds.

§ 1470.23 Conservation activity operation and maintenance.

This section addresses the participant's responsibility for managing and maintaining existing conservation activities on the agricultural operation to at least the level of conservation performance identified at the time of application for the conservation stewardship contract period. Additional activities installed and adopted over the term of the conservation stewardship contract also need to be maintained.

NRCS simplifies the language in this section.

§ 1470.24 Payments.

This section describes the types of payments issued under CSP, how payments will be derived, and payment limitations. NRCS modified paragraph (a) to consolidate duplicative information, remove outdated information, and to improve clarity by using the active voice. Specifically, NRCS clarified the annual payment structure and adjusted the timeframe for implementing the first conservation activity to align with EQIP. NRCS added language requiring a higher payment percentage for cover crop activities as stipulated in the 2018 Farm Bill.

The 2018 Farm Bill added advanced grazing management as another type of supplemental payment and included payment for development of a comprehensive conservation plan. NRCS incorporated advanced grazing management in paragraph (b)

and added language for supplemental payment rates as prescribed in the 2018 Farm Bill. NRCS inserted paragraph (c) to incorporate a one-time payment option for development of a comprehensive conservation plan.

Under paragraph (f), “Noncompensatory Matters,” NRCS describes situations in which a participant may not receive payment. To avoid duplicate payments, participants are required to certify on the payment application that they have not received payment under any other USDA program for the same conservation activity(ies) as discussed in paragraph (f)(1). Paragraph (f)(4) includes an additional noncompensatory matter stating that participants will not receive payment for conservation activities initiated or implemented prior to contract approval, unless NRCS grants a waiver prior to the participant starting the activity. NRCS maintains the statutory payment limitation but removed the annual payment limitation from paragraph (g) and the annual contract payment limitation from paragraph (h).

The CSP statute has an aggregate \$200,000 payment limitation for persons and legal entities for all CSP contracts entered into between FY 2019 through 2023. In addition to the statutory aggregate payment limitation, NRCS retains the \$200,000 contract limitation for individual and entity participants in paragraph (h) and expands the higher \$400,000 contract limit to include all joint operations, regardless of whether the joint operation uses an Employer Identification Number (EIN) or member Social Security Numbers (SSNs). This policy prohibits large joint operations from entering into multimillion-dollar CSP contracts while still offering a contract limit that does not discourage them from participating in CSP.

§ 1470.25 Voluntary contract modifications and transfers of land.

This section identifies the actions that NRCS might take to modify or terminate a contract and the notice and process requirements for transfers of land under a CSP contract. Because CSP was previously subject to a national average rate of \$18 per acre, NRCS restricted the extent to which a CSP contract could be modified to ensure that subsequent contract actions would not result in NRCS exceeding the statutory limit. The 2018 Farm Bill removes the \$18 per acre restriction and encourages more coordination between how contracts are administered under both CSP and EQIP. Therefore, NRCS made several changes to § 1470.25 to incorporate the new flexibility provided through the 2018 Farm Bill. Specifically, NRCS modified paragraph (b)(2) to add clarification that participant requests to take land out of production or convert an area under contract to a different land use do not include changes made to a land use as a result of involuntary loss of land. NRCS moved and simplified language related to conservation activity substitution from § 1470.24, Payments, and inserted this as paragraph (b)(3) of this section. NRCS added language to paragraph (c) to allow for contract increases due to minor adjustments made to conservation activities at the discretion of NRCS. The above referenced changes align CSP contract administration with EQIP contract administration as encouraged by the 2018 Farm Bill. NRCS modified paragraphs (d) and (e) to change language from mandatory to discretionary to provide greater consideration to a participant's circumstances with respect to operational changes and to provide greater consistency with other provisions in this section and throughout the part.

NRCS added a new paragraph (h) at the end of § 1470.25 to address contract changes in the cases of death, incompetency, or disappearance of any participant. The new paragraph helps to streamline contract matters at a difficult time for a participant's

family and provides greater consistency between how NRCS and FSA addresses these sensitive issues.

§ 1470.26 Contract renewal.

In this section, NRCS may allow a participant to renew the contract for one additional 5-year period if they meet specific criteria. NRCS updates this section to incorporate language from the 2018 Farm Bill, including that renewals will now be ranked and compete for available funding. Consistent with the 2018 Farm Bill, NRCS included a provision that participants may be given the opportunity to renew in the first half of the fifth year of their existing contract period. NRCS added paragraph (c) to include an eligibility restriction for renewal-eligible participants who elect not to renew in favor of competing for a new contract under the general program provisions. NRCS also updated this section to ensure consistent language and to remove the reference to the acreage cap.

§ 1470.27 Contract violations and termination.

This section addresses the procedures that NRCS will take when a violation has occurred or a contract termination is needed. NRCS made changes throughout the section to align violation procedures with EQIP, consolidate duplicative information, eliminate redundancy, and improve clarity.

§ 1470.28 Grassland conservation initiative contracts.

This section is added to incorporate this new initiative authorized through the 2018 Farm Bill. The grassland conservation initiative will assist producers in protecting grazing uses; conserving and improving soil, water, and wildlife resources; and achieving related conservation values by conserving eligible land through grassland conservation

contracts. Paragraph (b) explains that the initiative is applicable on eligible cropland for which base acres have been maintained by the Secretary under section 1112(d)(3) of the Agricultural Act of 2014 (7 U.S.C. 9012(d)(3)). NRCS will allow a GCI participant to plant crops on land enrolled in GCI if the participant meets specific resource conditions analogous to if the land were planted or maintained to grass. Conditions include development of a conservation plan and the participant must adopt the identified conservation activities to receive the \$18 per acre payment to ensure that the resource concerns associated with grassland are met.

Paragraph (c) identifies that the producer with eligible land is provided one opportunity to enroll in the initiative during FY 2019 through 2023; however, a producer has the option to defer enrollment to any year within this period. Producers with land eligible for the initiative may not have the same land enrolled under the initiative and the general CSP at the same time. Through paragraph (d), participants enrolled in the initiative must agree to meet or exceed the stewardship threshold for at least one priority resource concern before the end of the contract. Paragraph (e) defines the contract period as one 5-year term. Initiative contracts are not subject to renewal at the end of the initial 5-year term. Initiative contracts will receive payment of \$18 per acre not to exceed the acres enrolled in the initiative contract per paragraph (f). Paragraph (f) also provides that initiative contracts are not subject to the payment limitations or contract limits provided in § 1470.24(f) and (g), nor are they eligible for supplemental payments as provided in § 1470.24(b). The participant may request to terminate their initiative contract at any time and retain payments already received under the contract in accordance with paragraph (g).

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

This section specifies that any CSP payments received must be divided in the manner specified in the contract. Where conflicts arise between an operator and landowner, NRCS may refuse to enter into a CSP contract.

§ 1470.33 Access to agricultural operation.

This section notifies potential CSP applicants and CSP participants that an authorized NRCS representative may enter an operating unit for the purpose of determining eligibility, ascertaining accuracy of any representations, and confirming compliance with the program requirements during the term of the contract.

§ 1470.34 Equitable relief.

This section notifies a participant that he or she may be eligible for equitable relief in accordance with 7 CFR part 635, if the participant relied upon the advice or action of NRCS and did not know that the action or advice was erroneous.

§ 1470.37 Environmental credits for conservation improvements.

This section is changed to conform its language to section 1244(o) of the Food Security Act of 1985, as amended by clarifying 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.

Effective Date, Notice and Comment, and Paperwork Reduction Act

In general, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to benefits and therefore is exempt from the APA requirements. Further, the regulations to implement the programs of chapter 58 of title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. ch. 35), and
- To use the authority under 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effect date of 60-days after publication to allow for Congressional Review. This rule is a major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the CSP regulations expeditiously to provide assistance to producers, NRCS and CCC find that

notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, NRCS and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the *Federal Register*.

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 relevant section of either the 2018 Farm Bill or the 1985 Farm Bill. All comments received on or before the closing date for comments will be considered. NRCS will review and respond to the public comments in the CSP final rule.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this proposed rule are summarized below. The full cost benefit analysis is available on <https://www.regulations.gov/>. Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, to manage the private costs required to comply with federal regulations for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule involves transfer payments and does not rise to the level required to comply with Executive Order 13771.

Clarity of the Regulation

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 rule, we invite your comments on how to make the rule 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?

Cost Benefit Analysis Summary

Compared to CSP as authorized under the 2014 Farm Bill, Congress significantly reduced the program's size in the 2018 Farm Bill—from \$9 billion¹ to \$3.975 billion over 5 years--but left much of CSP's underlying structure intact. With fewer dollars available, fewer contracts will be funded under the 2018 Farm Bill. However, CSP will continue to fund high-ranking applications across all States, with the aim of improving cost effectiveness based on dollars per additional unit of conservation effect.

Funds for all activities conducted under the CSP contract are obligated up front and funds for contract renewals will come from the available funds at the time of contract renewal. The 2018 Farm Bill also eliminated the 10-million-acre cap on enrollment and the annual \$18 per acre cap on program costs, moving to an annual funding level for new CSP contracts similar to EQIP.

Regarding changes beyond funding and the elimination of the acreage cap, only revised CSP contract renewal conditions are expected to generate impacts that are moderately different from the 2014 Farm Bill. CSP contracts continue to run for 5 years and include the potential for a 1-time renewal option for an additional 5 years. Under the 2014 Farm Bill, renewals were non-competitive and at the request of the contract holder. Under the 2018 Farm Bill, contract renewals will be ranked against other contract renewals and funded based on the availability of funds in the year of renewal. The requirement to compete against other applicants for funds will reduce the number of contracts renewed and reduce the funding available for new contracts, reducing the

¹ This includes funding for renewing contracts for an additional five years.

number of conservation activities undertaken. Cost-effectiveness of CSP may increase as lower ranked applications will not be funded.

The 2018 Farm Bill also mandates the establishment of the Grassland Conservation Initiative for eligible producers with base acres where the entire farm was planted to grass or pasture, or was idle or fallow, from January 1, 2009 to December 31, 2017. Beginning in FY 2019, the Secretary provided a 1-time election for a producer to enroll eligible land for a 5-year non-renewable term. Participants must meet CSP eligibility conditions, but do not go through the ranking process. Participating producers must agree to meet or exceed the stewardship threshold for not less than 1 priority resource concern by the date on which the contract expires. The annual payment is limited to \$18 per acre, and enrolled acreage cannot exceed the number of base acres on a farm.

An estimated 2.4 million acres meet the 2009 to 2017 criterion noted above and are eligible for the Grassland Conservation Initiative. Although these eligible acres are concentrated in Texas, Oklahoma, and Kansas, there is eligible acreage throughout most of the country. The Grassland Conservation Initiative is expected to cost \$214.9 million over 5 years, representing 5.5-percent of total authorized CSP funding under the 2018 Farm Bill. Cost-effectiveness may be affected marginally as fewer funds will be available for higher ranked applications and contract renewals.

In implementing the 2018 Farm Bill, USDA is following legislative intent to maximize conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal, State, and Tribal environmental

requirements. Participation in CSP is voluntary. Hence, CSP participation is not expected to negatively impact program participants and nonparticipants.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because no law requires that a proposed rule be published for this rulemaking initiative. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in CSP and in doing so receive its benefits. Compliance with the provisions of CSP regulations is only required for those entities who choose to participate in this voluntary program.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). The 2018 Farm Bill requires minor changes to NRCS conservation programs, and there are no changes to the basic structure of the programs. NRCS conducted an analysis of the CSP interim rule and the analysis has determined there will not be a significant impact to the human environment and as a result, an environmental impact statement

(EIS) is not required to be prepared (40 CFR 1508.13). While OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. The Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available for review and comment for 30 days from the date of publication of this interim rule in the *Federal Register*. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the current available draft of the CSP EA and FONSI.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless

they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does not have Tribal implication that requires Tribal consultation under Executive Order 13175. If a Tribe requests consultation, NRCS and CCC

will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2018 Farm Bill.

Separate from Tribal consultation, communication and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about the regulation changes. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation Advisory Council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests. Additionally, NRCS will be holding several sessions with Indian Tribes and Tribal entities across the country to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access.

Unfunded Mandates

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. Agencies generally must prepare a written statement, including cost-benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year 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 UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies is 10.924—Conservation Stewardship Program.

E-Government Act Compliance

NRCS and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1470

Agricultural operation, Conservation activities, Natural resources, Priority resource concern, Resource-conserving crop rotation, Soil and water conservation, Soil quality, Stewardship threshold, 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 Conservation activities.
- 1470.8 Technical and other assistance.

Subpart B—Contracts and Payments

- 1470.20 Application for contracts and selecting offers from applicants.
- 1470.21 Contract requirements.
- 1470.22 Conservation stewardship plan.
- 1470.23 Conservation activity operation and maintenance.
- 1470.24 Payments.
- 1470.25 Contract modifications and transfers of land.
- 1470.26 Contract renewal.
- 1470.27 Contract violations and termination.
- 1470.28 Grassland conservation initiative contracts.

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. 3839aa-21- 3839aa-25.

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) 2019 and thereafter. Contracts entered into prior to FY 2019 will use the regulations and policies in effect prior to December 20, 2018.

(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.

(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 the application of that provision to a particular limited situation is inappropriate and inconsistent with the purposes of the program.

(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. To the extent practicable, NRCS will use scientifically developed assessment tools and guides including, but not limited to, soil erosion prediction tools, wildlife habitat assessment tools, rangeland health assessments, and soil health assessments, to establish the stewardship threshold and measure the level of improvement once the participant applies additional conservation activities to meet or exceed a resource concern.

(d) 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 priority resource concern areas;

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

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

(4) Identification of combinations of grazing conservation activities that will be part of an advanced grazing management system.

(e) 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 including, but not limited to, planning activities, outreach, and providing other forms of technical assistance.

§ 1470.3 Definitions.

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

Advanced grazing management means the use of a combination of grazing conservation activities, as determined by NRCS, which may include management-intensive rotational grazing, that provide for—

- (1) Improved soil health and carbon sequestration;
- (2) Drought resilience;
- (3) Wildlife habitat;
- (4) Wildfire mitigation;
- (5) Control of invasive plants; and
- (6) Water quality improvement.

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. The requirement in this paragraph (1) 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 Agriculture (USDA), or designee.

Comprehensive conservation plan means a conservation plan that meets or exceeds the stewardship threshold for each priority resource concern identified by NRCS across all land uses included in the operation.

Conservation activities mean conservation systems, practices, enhancements, or management measures, as determined by NRCS, and may include—

(1) Structural measures, vegetative measures, and land management measures, including agricultural drainage management systems as determined by NRCS;

- (2) Planning needed to address a priority resource concern;
- (3) Development of a comprehensive conservation plan;
- (4) Soil health planning, including planning to increase soil organic matter; and
- (5) Activities that will assist a producer to adapt to, or mitigate against, increasing weather volatility.

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 a specified treatment, such as a structural, vegetative, or management technique commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the 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 under this part 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 duration of the contract.

Eligible land means:

(1) Private and Tribal land upon which:

(i) Agricultural commodities, livestock, or forest-related products are produced;

and

(ii) 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; and

(2) Publicly owned land where the—

(i) Land is associated with the land described in paragraph (1) of this definition and is a working component of the producer's agricultural or forestry operation;

(ii) Producer has control of the land for the term of the contract; and

(iii) Conservation activities the producer will implement on the public land are necessary and will address an identified priority resource concern.

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 planning criteria identified for a given resource concern.

Planning criteria are defined for each resource concern in Section III—Conservation Management Systems, Field Office Technical Guide.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, planning criteria, and standards for planning and implementation of conservation practices. The FOTG contains detailed information on the planning standard to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared. (See <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/> to access your State FOTG.)

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

Indian lands mean 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) A limited resource farmer or rancher 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 nonfeasibility of otherwise obtaining an adequate remedy.

Management-intensive rotational grazing means a strategic, adaptively managed multipasture grazing system in which animals are regularly and systematically moved to a fresh pasture in a manner that, as determined by NRCS:

- (1) Maximizes the quantity and quality of forage growth;
- (2) Improves manure distribution and nutrient cycling;
- (3) Increases carbon sequestration from greater forage harvest;
- (4) Improves the quality and quantity of cover for wildlife;
- (5) Provides permanent cover to protect the soil from erosion; and
- (6) Improves water quality.

Management measure means one or more specific actions that is not a conservation practice, but which 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 Commodity Credit Corporation.

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 nonmaintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the activity, repairing damage, and replacement or restoration of the activity to its original condition if one or more components fail.

Participant means a producer that has applied for participation and 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, that is likely to be addressed successfully through implementation of conservation activities under this program.

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, as determined by NRCS:

- (1) A perennial grass;
- (2) A legume grown for use as forage, seed for planting, or green manure;
- (3) A legume-grass mixture; or
- (4) A small grain or other resource-demanding crop grown in combination with a grass, legume, forbs, grass-forbs mixture, whether interseeded 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;
- (5) Builds soil organic matter; and
- (6) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

Secretary means the Secretary of the 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 through the use of—

- (1) Planning criteria under a resource management system;

- (2) Predictive analytics tools or models developed or approved by NRCS;
- (3) Data from past and current enrollment in the program; and
- (4) Other methods that measure conservation and improvement in priority resource concerns, as determined by the Chief.

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, 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 pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or selected by USDA to assist USDA in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with USDA.

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

§ 1470.4 Allocation and management.

(a) The Chief will allocate funds to States, and may adjust the weighting of the following allocation factors to provide for equitable geographic distribution and meet enrollment goals, based on the consideration of—

(1) Each State’s proportion of eligible land to the total acreage of eligible land in all States;

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

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

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

(b) The Chief will allocate funding to the States to support organic production and transition to organic production based on—

(1) The number of certified and transitioning organic operations within the State; and

(2) The number of acres of certified and transitioning organic production within the State.

(c) Of the funds made available for each of fiscal years 2019 through 2023 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 may adjust State allocations or reallocate funds in any fiscal year if a State cannot use their full allocation.

§ 1470.5 Outreach activities.

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

(b) NRCS will specifically conduct outreach to historically underserved producers.

(c) NRCS will provide outreach 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, owner, or other tenant of an agricultural operation in the Farm Service Agency (FSA) farm records management system. Applicants must establish or update records with FSA before NRCS will consider an applicant as eligible;

(2) Share in the risk of producing a crop; share in the crop available for marketing from the farm (or would have shared had the crop been produced); and participate in the daily management, administration, and performance of the operation for the land included in the contract;

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

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

(5) Be in compliance with adjusted gross income provisions found at 7 CFR part 1400;

(6) 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, if applicable; and payment eligibility as established by 7 CFR part 1400; 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 lands (even if covered by the definition of eligible land in § 1470.3) are part of the agricultural operation, but are not eligible for enrollment 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, 7 CFR part 1468; and

(3) Land used for crop production after December 20, 2018, 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 Conservation activities.

(a) NRCS will record in the conservation stewardship plan the additional conservation activities the participant agrees to implement under the conservation stewardship contract.

(b) NRCS will make available to the public the list of conservation activities an applicant may choose to implement and manage through the CSP.

(c) NRCS may make available bundles of conservation activities that when implemented together address resource concerns in a more comprehensive and cost-effective manner.

§ 1470.8 Technical and other assistance.

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

(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 of operation or production system, including specialty crop and organic production.

(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 CSP at any time to enroll all of the eligible land included in their agricultural operation.

(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 the stewardship threshold for at least two priority resource concerns; and

(2) Would, at a minimum, meet or exceed the 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; and

(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 last quarter of the previous fiscal year or the first quarter of the current fiscal year.

(2) In evaluating CSP applications for new enrollment or for renewal, NRCS will rank applications based on the following factors:

(i) The natural resource conservation and environmental benefits that result from the conservation treatment on all State identified priority resource concerns at the time of submission of the application;

(ii) The degree to which the proposed conservation activities increase natural resource conservation and environmental benefits; and

(iii) Other consistent criteria, as determined by NRCS, including criteria the Chief determines are necessary to ensure that national, State, and local priority resource concerns are effectively addressed.

(3) In the event that two or more applications receive the same ranking under paragraph (c)(2) of this section, NRCS shall rank those contracts based on the extent to which the actual and anticipated conservation benefits from each contract are provided at the lowest cost relative to other similarly beneficial contract offers.

(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) *Ranking pools.* States will establish ranking pools in accordance with § 1470.2(d)(1).

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

(2) 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;

(iii) Producers who are veteran farmers or ranchers; and

(iv) Organic producers or producers who are transitioning to organic.

(e) *Application preapproval.* NRCS will make application preapproval determinations throughout the fiscal year based on eligibility and ranking score.

(f) *Field verification.* NRCS will conduct onsite field verification prior to entering into a conservation stewardship contract to substantiate the accuracy of the information provided by applicants during the application process and to verify applicability of planned conservation activities.

§ 1470.21 Contract requirements.

(a) After NRCS approves the application and develops the conservation stewardship plan in accordance with § 1470.22, NRCS will enter into a conservation stewardship contract with the participant to enroll the participant's agricultural operation in the program.

(b) The conservation stewardship contract will—

(1) Be for 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 conduct any activities on the agricultural operation that would tend to defeat the purposes of the program, as determined by NRCS;

(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 NRCS will not consider a participant in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including 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 NRCS “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 objectives and decisions to meet or exceed stewardship thresholds for identified resource concerns through implementation or adoption of one or more conservation activities. The plan will document the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Supporting documentation for the participant’s plan will include—

(1) Identification and inventory of priority resource concerns;

(2) Establishing benchmark data on the condition of existing conservation activities at the time of enrollment;

(3) A plan map delineating the agricultural operation included in the program contract with associated acreage amounts;

(4) For organic producers or producers transitioning to organic production, documentation that supports the participant’s transition to or participation in the National Organic Program; and

(5) Other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

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

also maintain and manage additional activities installed and adopted under 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 for 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 NRCS accepts the contract offer. 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) NRCS will make equal annual payments for the existing activity portion of the payment, specific to the operation, based on the land uses and NRCS assessment of existing stewardship. NRCS will make payments for the additional conservation activities based on the complexity and extent of the individual activities completed by the participant during the previous fiscal year. Additional activities implemented may vary from year to year, so the total annual payment may fluctuate;

(2) In order to receive an annual payment for a land use, participants must schedule, install, and adopt at least one additional conservation activity on the land use type;

(3) At least one additional conservation activity must be implemented on one land use type within the first 12 months of the contract. NRCS may extend this timeframe if

NRCS determines that the participant is unable to complete the conservation activity for reasons beyond their control;

(4) NRCS will base the annual payment rates, 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 State identified priority resource concerns over the term of the contract; and

(vii) Such other factors as determined by the Chief; and

(5) Participants will receive payments for cover crop activities at not less than 125 percent of the annual payment amount, 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 or adopt advanced grazing management, as defined by NRCS, to achieve beneficial crop or grazing rotations as appropriate for the eligible land of the participant.

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

(2) A participant must adopt or improve the resource-conserving crop rotation or adopt advanced grazing management during the term of the contract to be eligible to receive a supplemental payment;

(3) Supplemental payments will be based, to the maximum extent practicable, on the factors from paragraph (a)(4) of this section; and

(4) Supplemental payments will be not less than 150 percent of the annual payment amount, as determined by NRCS.

(c) *Comprehensive conservation plan.* Participants choosing to develop a comprehensive conservation plan through their conservation stewardship contract will receive a one-time payment for this activity. NRCS will determine the payment based on the number of priority resource concerns addressed in the comprehensive conservation plan and the number of types of land uses included in the plan. Participants will not be eligible to receive payment for plans developed prior to their enrollment in a conservation stewardship contract.

(d) *Minimum contract payment.* NRCS may make a minimum contract payment to a participant in any fiscal year in which the contract's payment amount total is less than a rate determined equitable by the Chief based upon the effort required by a participant to comply with the terms of the contract.

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

(f) *Noncompensatory matters.* NRCS will not provide a CSP payment to a participant 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;

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

(4) Conservation activities initiated or implemented prior to contract approval, unless NRCS granted a waiver prior to the participant starting the activity.

(g) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$200,000 under all CSP contracts entered into during fiscal years 2019 through 2023, excluding funding arrangements with Indian Tribes, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(h) *Contract limits.* Each conservation stewardship contract will be limited to \$200,000 over the term of the contract period, except that conservation stewardship contracts with any joint operation will be limited to \$400,000 over the term of the contract period.

(i) *Scope of payment and contract limitations for Indian Tribes and individual Tribal members.* Contracts with Indian Tribes are not subject to payment or contract limitations but payment limitations in paragraph (f) of this section apply to individual Tribal member(s). Indian Tribes and the Bureau of Indian Affairs 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.

(j) *Tax Identification Number.* To be eligible to receive a CSP payment, all applicants must provide a tax identification number. In accordance with 7 CFR part 1400, applicants who participate as a legal entity or joint operation must provide a list of all members of the legal entity or joint operation and associated embedded entities, along with the members' Social Security numbers and percentage interest in the legal entity or joint operation. NRCS attributes payments directly to legal entity members for the purpose of complying with paragraph (f) of this section.

(k) *Unique identification numbers.* American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that uses a unique identification number as an alternative to a tax identification number will use that identifier for all CSP contracts in which they participate.

§ 1470.25 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, including—

(1) Removing contract acres the participant will enroll in CRP, protect with a wetland reserve easement through the Agricultural Conservation Easement Program (ACEP), or enroll 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. NRCS may reduce payments for such modified contracts 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.

(2) Accommodating other limited changes, 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. These situations apply only to land for which the participant has and will retain effective control, and not for situations of involuntary loss of land.

(3) Allowing a participant to substitute a conservation activity as long as the level of conservation performance agreed to at the time of enrollment remains the same or is improved with implementation of the substitute activity.

(i) Adjustments to existing activities may occur consistent with conservation performance requirements from § 1470.23.

(ii) [Reserved]

(4) 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 contract modification under this section will not increase the scheduled annual payments under the program, except to make minor adjustments to a conservation activity, as determined by NRCS; implement an appeal determination; correct an administrative error as approved by NRCS; or to adjust payment limitations. Contracts transferred from an individual or entity to a joint operation will retain the original contract limit outlined in § 1470.24(g).

(d) Within the time specified in the contract, a participant must provide NRCS with written notice regarding any voluntary or involuntary loss of control of any acreage under the CSP contract, which includes changes in a participant's ownership structure or corporate form. Failure to provide timely notice may result in termination of the entire contract.

(e) Unless NRCS approves a transfer of contract rights under this paragraph (e), a participant losing control of any acreage may constitute a violation of the CSP contract and NRCS may terminate the contract and require a participant to refund all or a portion of any financial assistance provided. NRCS may approve a transfer of the contract if—

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (d) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the CSP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the original participant's losing control of all or a portion of the land under contract.

(f) Until NRCS approves the transfer of contract rights, the new producer is not a participant in the program and may not receive payment for conservation activities commenced prior to approval of the contract transfer.

(g) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control of the land was voluntary, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

(h) In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the CSP contract—

(i) Terminate the contract;

(ii) Make any payments due under this part pursuant to guidance under applicable provisions of 7 CFR parts 707 and 1400 (including payment to successor(s)); or

(iii) Take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

§ 1470.26 Contract renewal.

(a) During the first half of the fifth year of the initial contract period, NRCS may allow a participant to apply and compete for the opportunity under § 1470.20 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 existing 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;

(3) Agree to adopt and continue to integrate new or improved conservation activities across the entire agricultural operation, demonstrating continued improvement during the additional 5-year period, as determined by NRCS; and

(4) By the end of the renewal contract period, agree to meet or exceed the stewardship threshold of at least two additional priority resource concerns on the agricultural operation; or to adopt or improve conservation activities, as determined by NRCS, to achieve higher levels of conservation performance with respect to not less than two existing priority resource concerns that are specified by the Chief in the initial contract.

(c) Participants eligible for renewal who choose not to renew will be ineligible for a new contract on land previously enrolled under a conservation stewardship contract for 2 years following expiration of their initial contract.

§ 1470.27 Contract violations and termination.

(a) NRCS may terminate a contract:

(1) Without the consent of the participant where NRCS 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. NRCS will not assess liquidated damages for contracts terminated under this basis.

(b) When NRCS terminates a contract in accordance with paragraph (a) of this section, NRCS may allow a participant to retain payments already received based on—

(1) The level of effort the participant has made to comply with the contract.

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 any contract 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; or

(2) Hardship situations where circumstances beyond the participant's control prevented the participant from complying with the contract. Any hardship affecting the participant's ability to comply with the contract must not have existed at the time the contract was executed by the participant. Participants may submit a written request to NRCS, along with additional supporting documentation, for NRCS to consider granting a waiver of any requested repayment and/or assessment of liquidated damages.

(c) If NRCS determines that a participant is out of compliance with the contract terms or incorporated documents, NRCS will notify the participant to explain what the participant must do to regain compliance and the consequences for not correcting the violation. NRCS will give the participant reasonable time to complete all necessary corrective actions, not to exceed one year. NRCS may authorize additional time for the participant to complete the corrective actions if, during the initial period, the participant

was unable to complete the corrective actions due to circumstances beyond their control.

If a participant's contract continues in violation, NRCS may:

- (1) Terminate the contract in accordance with paragraph (e) of this section; or
- (2) Where NRCS determines the violation does not warrant termination, NRCS

may require the participant to:

- (i) Refund all or a portion of the payments provided; or
- (ii) Agree to such adjustments to the contract terms as determined appropriate by

NRCS.

(d) Notwithstanding the provisions of paragraph (c) of this section, NRCS will terminate a contract, 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 NRCS found the participant

ineligible for payments as provided in § 1470.36; or

(3) Incurred a contract violation that the participant cannot correct 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, except as otherwise noted in paragraph (b) of this section.

§ 1470.28 Grassland conservation initiative contracts.

(a) The purpose of the grassland conservation initiative (GCI) is to assist producers in protecting grazing uses, conserving and improving soil, water, and wildlife

resources, and achieving related conservation values by conserving eligible land through grassland conservation contracts.

(b) The GCI is applicable on eligible cropland for which base acres have been maintained by the FSA under section 1112(d)(3) of the Agricultural Act of 2014 (7 U.S.C. 9012(d)(3)).

(c) Producers with eligible land will have one-time election to enroll in the GCI during fiscal years 2019 through 2023. A producer may elect to enroll eligible acres in the GCI or under a general CSP contract. A producer with land eligible for the GCI may not have the same land enrolled under both a GCI and general CSP contract at the same time.

(d) Participants enrolled in the GCI must agree to meet or exceed the stewardship threshold for at least one priority resource concern before the end of the contract.

(e) A GCI plan shall:

(1) Encompass all enrolled land;

(2) Require adoption of conservation activities to address grassland resource concerns; and

(3) If crops are grown, require adoption of conservation activities that achieve conservation stewardship levels analogous to the land being planted or maintained in grass.

(f) The GCI contract will be for one 5-year term and will not be subject to renewal.

(g) GCI annual payments will be \$18 per acre, not to exceed the acres enrolled in the GCI contract.

(1) GCI contracts are not subject to the payment limitations or contract limits provided in § 1470.24(f) and (g).

(2) GCI contracts are not eligible for supplemental payments as provided in § 1470.24(b).

(h) The participant may request to terminate their GCI contract at any time and retain payments already received under the contract.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

Participants must divide payments received under this part in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who have an interest in acreage being enrolled receive equitable treatment, as determined by NRCS. NRCS may refuse to enter into a contract when joint applicants seeking enrollment disagree on 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 to ascertain the accuracy of any representations, including natural resource information provided by an applicant to evaluate 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 try to contact the participant prior to the exercise of the provision in this section.

§ 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. NRCS will not assume the financial or technical liability for any action by a participant that was taken based on the advice of a TSP. This liability will remain with the TSP.

(b) If NRCS finds that a participant is in violation of a provision of the conservation stewardship contract or any incorporated document 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) NRCS will not prohibit a participant under this part from participating in, and receiving compensation from, an environmental services market if one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with CSP purposes, as determined by NRCS. CSP participation may create environmental benefits that qualify for environmental credits under an environmental credit-trading program. NRCS will not prohibit a participant under this part from participating in, or receiving compensation from, an environmental credit-trading program, and NRCS asserts no direct or indirect interest in these credits. However, 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. NRCS retains the authority to ensure that CSP purposes are met and that one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with CSP purposes.

(b) The participant must meet all operation and maintenance 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 modifications 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 because of a court order.

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