PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2009, an assessment rate of $1.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: July 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18108 Filed 7–28–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0578–AA43

Conservation Stewardship Program

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

ACTION: Interim final rule with request for comment.

SUMMARY: Section 2301 of the Food, Conservation, and Energy Act of 2008 (the 2008 Act) amended the Food Security Act of 1985 to establish the Conservation Stewardship Program. The purpose of the Conservation Stewardship Program is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities, and improving, maintaining and managing existing conservation activities. This interim final rule, with request for comment, sets forth the policies, procedures, and requirements necessary to implement the Conservation Stewardship Program as authorized by the 2008 Act amendments.

DATES: *Effective Date:* This interim final rule is effective July 29, 2009.

Comment Date: Submit comments on or before September 28, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS–IFR–09004) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://regulations.gov* and follow the instructions for sending comments electronically;
- *E-mail directly to NRCS: CSP2008@wdc.usda.gov;*
- *Mail:* Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250–2890;
- *Fax:* (202) 720–4265;
- *Hand Delivery Room:* USDA South Building, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4527 in order to be escorted into the building;
- This interim final rule may be accessed via the Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov;* select the Farm Bill link from the menu; select the Interim final link from beneath the Final and Interim Final Rules Index title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250; Phone: (202) 720–1845; Fax: (202) 720–4265; or e-mail *CSP2008@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (FR Doc. 93–24523, September 30, 1993), this interim final rule with request for comment is an economically significant regulatory action since it results in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 5831 of the South Building, USDA, 1400 Independence Avenue, SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this preamble and a copy of the analysis is available upon request from Gregory Johnson, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5237–S, Washington, DC 20250–2890 or electronically at: *http://www.nrcs.usda.gov/programs/csp/* under the *CSP Rules and Notices with Supporting Documents* title.

Regulatory Flexibility Act

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

Environmental Analysis

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). A programmatic environmental assessment has been prepared in association with this rulemaking. The analysis has determined that there will not be a significant impact to the human environment and as a result an Environmental Impact Statement is not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for 30 days from the date of publication of this interim final rule in the **Federal Register.** A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/.* A hard copy may also be requested from the following address and contact: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to *NEPA2008@wdc.usda.gov;* (2) e-mail to e-gov Web site at *http://www.regulations.gov*; or (3) written comments to: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including CSP, will continue to be

administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. CSP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the CSP rule portends no adverse civil rights implications for women, minorities and persons with disabilities.

Paperwork Reduction Act

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

Government Paperwork Elimination Act

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

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

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

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

Unfunded Mandates Reform Act of 1995

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

Economic Analysis—Executive Summary

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) conducted a cost-effectiveness analysis (CEA) of the Conservation Stewardship Program (CSP) as formulated for the interim final rule. This CEA describes how financial assistance (FA) and technical assistance (TA) are made available through CSP with the program objective being to have producers adopt additional conservation activities. The CEA attempts to compare the impact of these activities in generating environmental benefits with program costs. Many of these improvements can produce beneficial impacts concerning on-site resource conditions (such as the maintenance of the long-term productivity of their land), and can potentially produce significant off-site environmental benefits, such as reduced non-point source pollution, improved air quality due to lower carbon dioxide emissions, and enhanced wildlife habitat.

In considering alternatives for implementing CSP, the United States Department of Agriculture (USDA) followed the legislative intent to establish a clear and transparent method and determine in an open participatory process, potential participants' current level of conservation stewardship attainment levels in order to gauge their environmental impact and compare them. The CSP is a voluntary program, and therefore, the program is not expected to impose any obligation or burden upon agricultural producers and non-industrial private forestland owners who choose not to participate.[1] Congress authorized the enrollment of 12,769,000 acres for each fiscal year (FY) for the period beginning October 1, 2008, and ending on September 30, 2017. For fiscal years 2009 through 2012, CSP has been authorized 51,076,000 acres (four years multiplied by a 12,769,000 acre program cap per year).

This analysis builds on the former Conservation Security Program introduced in 2004 with its foundation set in the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (2002 Farm Bill). While the spirit of both programs is similar, the main focus of the 2008 Act CSP is to assist landowners with adopting additional conservation enhancements. This focus is characterized by the emphasis placed on new enhancement activities selected by participants in the application ranking process. However, basic eligibility criteria and ranking will also consider the benchmark level of stewardship and planned conservation activities to be adopted (if needed in those cases where participants do not meet the stewardship threshold requirements). The environmental benefits expected to be generated by enhancement and maintenance activities are based on extrapolations of the environmental benefits generated from many traditional NRCS conservation practices (these are described in detail in Appendix B). However, while environmental impacts from many traditional NRCS conservation practices have been assessed, the impacts generated from enhancement and maintenance activities are not well understood. In conducting economic analyses where benefits are not well understood or difficult to measure, but costs are available, economists often turn to a cost-effectiveness analysis (CEA) framework over the more traditional benefit-cost analysis approach. The environmental impacts from enhancement and maintenance activities are not well understood, and therefore, NRCS is adopting the CEA approach for this CSP economic analysis.

Methodology Employed in This Study

As stated above, many conservation practices have been extensively studied, but similar studies pertaining to enhancement activities have not been conducted. As a result, estimation of a true baseline of environmental conditions before and after CSP implementation is not possible. The methodology employed in this study involves the modeling of baseline environmental conditions through Microsoft Access. The model is complex

[1] An impact could be expected in cases where CSP funds activities that lead to large increases of certain environmental services and goods where those markets are beginning to get started.

because it is based on the major decision rules in the Conservation Measurement Tool (CMT). The CMT refers to the procedures developed by NRCS to estimate the existing and proposed conservation performance to be achieved by a producer. This model has a high degree of uncertainty because CSP is a new program and it is difficult to project the potential pool of applicants without historical enrollment data. This study's model distills the basic rules of the CMT and couples it with a historical data on producer characteristics. These data include internal NRCS program data, past studies on conservation stewardship, other USDA data and information as well as expert opinion from agency technology and program specialists. This expert opinion was needed in making several key assumptions about expected producer response to CSP and in turn likely participation as well as resource response to conservation activities. The model applies questions, similar to those in the CMT, to a representative set of farms constructed with the historical data. Using simulated responses for the representative farms to the questions in the CMT regarding the applicant's agriculture operation, the model predicts expected participation by land-use type and farm type along with expected program costs and conservation performance points.

The responses can be grouped by CSP's ranking factors. The first ranking factor, RF–1, is the level of conservation treatment on priority resource concerns at the time of application. RF–1 is used to establish an initial or baseline ''hypothetical'' index of environmental conditions for each applicant's operation. The total level of conservation performance points reflects the number of existing and planned conservation activities multiplied by a range of points from −5 to +5 for each activity; producers are assigned a point estimate based on their response on the CMT. Individual applicant's conservation performance points are aggregated to create a ''hypothetical'' baseline of environmental conditions for the Nation (in this case, the Nation is that sub-set of all farmers and ranchers by farm type and land-use type expected to apply for CSP).

Based on responses to the remaining three ranking factors [2] in the CMT, the model then produces an index of environmental benefits reflecting the total level of additional enhancement activities selected by participants to be addressed (the ''additionality'' point total). Given this basic data on potential participants' stewardship benchmarks and willingness to adopt new activities, the model compares expected producer activity costs with their expected CSP annual payments. The major producer decision to participate in CSP in the model is if expected CSP payments offset at least 50 percent of the costs of adopting the associated conservation activities.

The baseline in this analysis represents a pre-statute scenario. Due to the fact that each policy scenario selects applicants from different pools, no ''generic'' baseline scenario could be determined. Instead the analysis adjusts the level of benchmark conservation performance points in each scenario to account for what would have been generated without CSP (pre-statute).

The model allows USDA to verify if the national CSP average per acre annual payment rate has been met under a number of different program designs. More importantly, it can also estimate the trade-off between different policy designs and expected conservation performance outcomes in a cost-effectiveness framework. Such program design choices include varying the relative weights across ranking factors used in the participant ranking process and the expected results from varying other program parameters, such as relative weights on different priority resource concerns and stewardship threshold levels. The main policy options studied in this analysis involve the first item listed above; that is, the impact on acreage, conservation performance points, and program costs from associated options varying the relative weights across ranking factors used in the participant ranking process.

Conclusions and Recommendations

Results of alternative policy options suggest that there may be a set of general conclusions that policy makers should consider. These include:

- The policy constraints on the statutory requirements for the program posed serious challenges for the model developers. It is obvious that these constraints will pose similar challenges in implementing this program. In particular, achieving the national annual acreage enrollment goal at the designated average costs per acre mandated in legislation will be a challenge given the heterogeneity of producers' baseline resource conditions and demand for enhancements.
- When large operations enter into the program and reach their annual contract limit ($40,000), CSP gains program acreage, but pushes per acre program costs down. By effectively lowering total program costs on a per acre basis, the additions of large operations enable the program to offer higher payment rates for other farm types and sizes, holding all else constant. For example, a 10,000 acre wheat farm in Montana that ''hits'' its payment limitation would be recorded as having a $4 per acre program cost ($40,000 divided by 10,000 acres).

Conservation activity costs were adjusted to account for economies of scale on the part of large operations. Without such adjustments, larger farms tended not to enter into CSP contracts because their per-acre costs would remain constant as their per-acre payments were effectively lowered (as their payment cap was ''hit'' as explained above). Thus without such adjustments, their large size increased their farm-level costs while at the same time restricted their ability to accrue additional CSP payments beyond the payment cap. This finding shows the importance that farm size will play in an applicants' decision to participate in CSP. It also shows how sensitive actual enrollment and program costs are to the types and sizes of farms expected to enroll in CSP.

The ability to place different weights on ranking factors in a predictive model provides insights into expected changes in program and conservation performance outcomes. Program design is critical in satisfying the statutory requirements of this program. In comparing several alternative policy options, model results showed that the cost-based conservation performance point payment levels used in this analysis were not capable of achieving the legislated national $18 average per acre program cost in all options. This is due to the changing land-use compositions and conservation performance outcomes which resulted under each alternative policy option. They also highlight the trade-offs that exist between alternative policy options with respect to attaining as close an acreage goal as is mandated; program costs; cost-effectiveness; and conservation performance.

[2] These remaining three ranking factors are: RF–2 is the degree to which treatment on priority resource concerns increases conservation performance by the end of the CSP contract; RF–3 is the number of priority resource concerns to be treated to meet or exceed threshold by the end of the CSP contract; and, RF–4 is the extent to which other resource concerns will be addressed to meet or exceed the stewardship threshold by the end of the CSP contract. These three ranking factors determine the level of ''additionality'' created through the new enhancement activities associated with the CSP contract, whereas the previous ranking factor establishes the benchmark level of conservation stewardship.

Comparisons of alternative policy options (see Table 1) indicate that enrolled program acreage is maximized by adopting policy option 4 (PO–4). However, PO–4 violates the national program per acre cost constraint. All other alternative policy options produced lower program acreage totals as compared with PO–1.

Comparisons showed that program costs were lowest in PO–2, which also showed good cost-effectiveness, but whose program acreage, as compared to PO–1 and all other alternative policy options, was the lowest. Total program costs were highest with PO–4, which provided strong evidence of luring strong participation and production of conservation performance points from new enhancements, but violated the national program per acre cost constraint.

Cost-effectiveness estimates suggest that all alternative policy options and the baseline produce about the same cost-effectiveness (about $0.37 to $0.39 per point on a total point basis). PO–2 and PO–5 produced the most favorable cost-effectiveness estimates on a total point basis, but results are different when benchmark conservation performance points are adjusted. Making these adjustments puts PO–3 and PO–4 in strong contention for policy consideration.

Both PO–2 and PO–5 satisfied the national program per acre cost constraint. However, both options produced much lower totals of conservation performance points than other policy alternatives. In addition PO–5 produced a more equitable distribution of program acreage across land-use types than any other policy option.

These comparisons showed that the total conservation performance points generated would be maximized in PO–4 and at the least cost-effectiveness rate on an adjusted point basis. However, PO–4 violates the $18 average per acre program cost constraint. In its favor, PO–4 produces the highest level of conservation performance points emanating from new conservation activities. PO–3 attained the next highest conservation performance point total, but PO–3 violated the $18 average per acre program cost constraint to a greater extent than did PO–4.

The analysis assumes full participation each year that the program is made available. Only Government costs are included in this cost estimate given the wide set of possible initial resource conditions and enhancement practices likely to be adopted. Because of this diversity in initial resource conditions, it was not possible to ascertain whether (or to what extent) CSP payments off-set expected costs to adopt enhancement and other conservation stewardship activities by producers or past costs incurred to attain stewardship thresholds. Given this caveat, cumulative program costs for four program sign-ups are estimated to be $3.27 billion in constant 2007 dollars, discounted at 7 percent. At a 3 percent discount rate, this estimation increases to $3.86 billion. These costs assume that the duration of each contract is five years and the program duration is offered for four years (FY 2009 to FY 2012). In the case where program duration is offered for nine years (FY 2009 to FY 2017), cumulative program costs for nine program sign-ups are estimated to be $6.3 billion using constant 2007 dollars discounted at 7 percent. At a 3 percent discount rate, this estimate increases to $8.1 billion.

TABLE 1—SUMMARY OF SIMULATION RESULTS OF PROGRAM ACREAGE AND ASSOCIATED PROGRAM COSTS, BY LAND-USE TYPE FOR CSP POLICY OPTIONS

Cost per acre	Policy option [1]	Acres funded in program (in millions of acres)				Total program cost (in millions of dollars)			
		Cropland	Pasture	Rangeland	Total [2]	Cropland	Pasture	Rangeland	Total
N/A	No Program [3]	0	0	0	0	$0	$0	$0	$0
17.78	PO–1	8.3	2.2	1.1	11.6	182.7	18.3	4.5	205.5
15.74	PO–2	8.6	1.9	0.9	11.3	160.0	14.6	3.8	178.3
19.25	PO–3	9.0	1.6	0.8	11.5	204.2	13.8	3.3	221.3
18.96	PO–4	9.0	1.8	0.9	11.8	203.4	15.8	3.7	222.9
16.93	PO–5	8.0	2.4	1.2	11.5	170.6	19.5	4.9	195.0

[1] PO–1 assumes an equal weight on each ranking factor.
PO–2 assumes a 62.5 percent weight on RF–1 and a 12.5 percent weight on RF–2, RF–3, and RF–4.
PO–3 assumes a 62.5 percent weight on RF–2 and a 12.5 percent weight on RF–1, RF–3, and RF–4.
PO–4 assumes a 62.5 percent weight on RF–3 and a 12.5 percent weight on RF–1, RF–2, and RF–4.
PO–5 assumes a 62.5 percent weight on RF–4 and a 12.5 percent weight on RF–1, RF–2, and RF–3.
[2] Annual CSP acreage cap is 12.769 million acres with 10 percent allocated to non-industrial private forestland (NIPF) leaving roughly 11.5 million acres for cropland, pasture, and rangeland acreage.
[3] No program scenario assumes that CSP is not available to landowners. As discussed in the text, some level of benchmark conservation performance points are assumed to be generated in the absence of CSP. The exact amount is difficult to determine because maintenance of existing conservation measures vary due to several factors, such as fluctuations in personal economic conditions and preferences, advancing age, and changing resource priorities. In addition, the applicant pool in each alternative policy scenario is made up of different farm types and land-use types. These conditions preclude the estimation of a ''generic'' baseline applied to all alternative policy options. As a result, maintenance on existing conservation measures is assumed to generate 90 percent of the benchmark conservation performance points estimated in each scenario.

TABLE 2—SUMMARY OF SIMULATION RESULTS OF THE CONSERVATION PERFORMANCE POINTS AND COST EFFECTIVENESS INDICATORS FOR CSP POLICY OPTIONS

Policy Option [1]	Benchmark (in millions of conservation performance points)			Total points	Dollars per point	
	Baseline [2]	Incremental	Enhancement		Incremental plus enhancement	Total points
No Program [2]	Indeterminate	None	N/A	N/A	N/A	N/A
PO–1	124.47	13.83	329.8	468.1	$0.51	$0.38

TABLE 2—SUMMARY OF SIMULATION RESULTS OF THE CONSERVATION PERFORMANCE POINTS AND COST EFFECTIVENESS INDICATORS FOR CSP POLICY OPTIONS—Continued

Policy Option [1]	Benchmark (in millions of conservation performance points)			Total points	Dollars per point	
	Baseline [2]	Incremental	Enhancement		Incremental plus enhancement	Total points
PO–2	135.36	15.04	251.8	402.2	0.56	0.37
PO–3	106.2	11.8	377.2	495.2	0.50	0.39
PO–4	107.46	11.94	385.6	505.0	0.49	0.38
PO–5	126.99	14.11	309.0	450.0	0.51	0.37

[1] PO–1 assumes an equal weight on each ranking factor.
PO–2 assumes a 62.5 percent weight on RF–1 and a 12.5 percent weight on RF–2, RF–3, and RF–4.
PO–3 assumes a 62.5 percent weight on RF–2 and a 12.5 percent weight on RF–1, RF–3, and RF–4.
PO–4 assumes a 62.5 percent weight on RF–3 and a 12.5 percent weight on RF–1, RF–2, and RF–4.
PO–5 assumes a 62.5 percent weight on RF–4 and a 12.5 percent weight on RF–1, RF–2, and RF–3.
[2] Baseline (pre-statute) assumes that CSP is not offered.
[3] No program scenario assumes that CSP is not available to landowners. As discussed in the text, some level of benchmark conservation performance points are assumed to be generated in the absence of CSP. The exact amount is difficult to determine because maintenance of existing conservation measures vary due to several factors, such as fluctuations in personal economic conditions and preferences, advancing age, and changing resource priorities. In addition, the applicant pool in each alternative policy scenario is made up of different farm types and land-use types. These conditions preclude the estimation of a ''generic'' baseline applied to all alternative policy options. As a result, maintenance on existing conservation measures is assumed to generate 90 percent of the benchmark conservation performance points estimated in each scenario.

NRCS analysis indicates that policy options PO–3 and PO–4 demonstrated the highest degree of cost-effectiveness and environmental performance improvement. As a result, NRCS is giving strong consideration to policy options PO–3 and PO–4 for subsequent signup periods.

For the initial signup period, NRCS recommends that the CSP program design place equal weight on the considered program ranking factors until program performance is established. Given that program performance has not been established, NRCS seeks public comment on which option best enables NRCS to meet program objectives. In addition, NRCS is requesting public comment on the appropriate weighting of the five ranking factors to maximize cost-effectively environmental benefits while maintaining consistency with the statutory purposes of the program. NRCS will consider these public comments when revising the weighting of these ranking factors prior to the next subsequent ranking period. The CSP rule will be finalized in FY 2010.

Section 2708 of the 2008 Act

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

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

(1) To monitor compliance with program requirements;

(2) To measure program performance;

(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

(4) To track participation by crop and livestock type; and

(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004).''

This new provision presents in one place the accountability requirements placed on the Agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve program, the Conservation Security Program, the Conservation Stewardship Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of Section 1244(g) of the 1985 Act and the Agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of Section 1244(g) of the 1985 Act, and Agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the Agency accountability requirements as outlined in Section 1244(g) of the 1985 Act.

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants meet eligibility requirements, and follow-up procedures to ensure that participants are complying with the terms and conditions of their contractual arrangement with the government and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies are set forth in Agency guidance (Conservation Programs Manual_440_Part 512 and Conservation Programs Manual _440_Part 508) (*http://directives.sc.egov.usda.gov/*). The program requirements applicable to participants that relate to compliance are set forth in these regulations in § 1470.6, ''Eligibility requirements,'' § 1470.21, ''Contract requirements,'' § 1470.22 ''Conservation stewardship plan,'' and § 1470.23, ''Conservation activity operation and maintenance.'' These sections make clear the general program eligibility requirements, participant obligations for implementing a conservation stewardship plan, contract obligations, and requirements for operating and maintaining CSP-funded conservation activities.

Measure program performance. Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its

conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: *http://ias.sc.egov.usda.gov/PRSHOME/.* Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM_340_401 and GM_340_403 (*http://directives.sc.egov.usda.gov/*)).

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

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

NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation programs.[3] In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help produce estimates of environmental effects accomplished through Agency programs, such as CSP. In 2006 a Blue Ribbon panel evaluation of CEAP[4] strongly endorsed the project's purpose, but concluded ''CEAP must change direction'' to achieve its purposes. In response, CEAP has focused on priorities identified by the Panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status, is available at *http://www.nrcs.usda.gov/technical/NRI/ceap/.* Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment, and performance measurement and reporting policies are set forth in Agency guidance (GM_290_400; GM_340_401; GM_340_403) (*http://directives.sc.egov.usda.gov/*).

Demonstrating the long-term conservation benefits of conservation programs is an Agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under each of its programs. The CSP program requirements applicable to participants that relate to producing long-term conservation benefits are located in § 1470.21, ''Contract requirements,'' § 1470.22 ''Conservation stewardship plan,'' and § 1470.23, ''Conservation activity operation and maintenance.'' These requirements and related program management procedures supporting program implementation are set forth in Agency guidance (Conservation Programs Manual 440_Part 512 and Conservation Programs Manual _440_Part 508).

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

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

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM_290_400 and GM_130_402) (*http://directives.sc.egov.usda.gov/*).

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

Discussion of Program

The Food, Conservation, and Energy Act of 2008 (2008 Act) amended the Food Security Act of 1985 (1985 Act) to establish the Conservation Stewardship Program (CSP) and authorize the program in fiscal years 2009 through 2012. The purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by: (1) Undertaking additional conservation activities; and (2) improving, maintaining, and managing existing conservation activities. The Secretary of the United States Department of Agriculture (USDA) has delegated authority to the Natural Resources Conservation Service (NRCS) to administer CSP.

Through CSP, NRCS will provide financial and technical assistance to eligible producers to conserve and enhance soil, water, air, and related natural resources on their land. Eligible lands include cropland, grassland,

[3] The exception to this is the Conservation Reserve Program; since 1987 the NRI has reported acreage enrolled in CRP.

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

prairie land, improved pastureland, rangeland, nonindustrial private forest lands, agricultural land under the jurisdiction of an Indian tribe, and other private agricultural land (including cropped woodland, marshes, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed. Participation in the program is voluntary.

CSP encourages land stewards to improve their conservation performance by installing and adopting additional activities, and improving, maintaining, and managing existing activities on agricultural land and nonindustrial private forest land. NRCS will make funding for CSP available nationwide on a continuous application basis.

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

The 2008 Act requires NRCS to manage CSP to achieve a national average rate of $18 per acre, which includes the costs of all financial and technical assistance, and any other expenses associated with program enrollment and participation. NRCS will use a producer self-screening checklist to help potential applicants decide for themselves whether CSP is the right program for them and their operation. The process focuses on basic information about CSP eligibility requirements and contract obligations.

When examining applicant eligibility, CSP bases determinations on how applicants delineate their operation for other USDA programs. Specifically, any potential participant must be the operator in the Farm Service Agency (FSA) farm records management system. This requirement is needed because the FSA record system provides applicant eligibility information for Adjusted Gross Income and highly erodible land and wetland conservation provisions. Potential applicants who are not in the FSA farm records management system, or whose records are not current, must establish or update their records prior to making a CSP application. The 2008 Act also requires that the agricultural operation must include all agricultural land under the effective control of the applicant for the term of the proposed contract that is operated substantially separate from other operations.

The 2008 Act directed the development of the conservation measurement tool (CMT) to estimate the level of environmental benefit to be achieved by a producer in implementing conservation activities. The term ''environmental benefit'' used in the context of the CMT is misleading. The CMT considers the relative physical effects of existing and proposed conservation activities to estimate improvements in conservation performance. It does not measure true environmental benefits, *e.g.,* tons of carbon sequestered, or tons of soil saved.

The CMT combines functions of existing NRCS tools for soil and water, grazing lands, and wildlife habitat; considers the physical effects of conservation activities, such as establishing permanent vegetative cover, across natural resource concerns and energy; and integrates and supports the processes of inventorying resources, determining eligibility, and ranking applications.

NRCS will assist applicants with completing the inventory of resource conditions in the CMT. The inventory will enable the CMT to calculate a conservation performance score that will assist in ranking applications within State-identified geographic area ranking pools. For approved applicants, NRCS will request records of the applicants' conservation activity and production system information and conduct on-site field verification to substantiate, prior to contract approval, that the resource inventory information provided for the CMT was accurate.

CSP provides participants with two possible types of payments:

(1) Annual payment for installing and adopting additional activities, and improving, maintaining, and managing existing activities. Compensation for on-farm research and demonstration activities, or pilot testing will be made through the annual payment.

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

Setting the annual payment rates will be a significant challenge for NRCS. In addition to managing the program within the national average rate of $18 per acre, the 2008 Act also provides an acreage enrollment limit of 12,769,000 acres for each fiscal year. To address these constraints, NRCS intends to use the first ranking period as a payment discovery period to arrive at a uniform payment rate per conservation performance point by eligible land use type. NRCS requests public comment on ways to address program acreage and payment constraints, refine their payment approach, and make annual payments more consistent and predictable.

Additionally NRCS seeks public comment on the proper distribution of CSP annual payment between payment for additional activities and payment for existing activities.

Section 1470.26 of this interim final rule provides that NRCS will permit contract renewals to foster participant commitment to increased conservation performance. NRCS seeks public comment on the contract renewal criteria in the interim final rule.

NRCS can broaden CSP's impact by offering participants the opportunity to install innovative conservation activities that appeal to all levels of land stewards, and increase conservation performance across all land uses, operation sizes and types, and production systems, including specialty crops and organic production. NRCS specifically requests through the comment process information on innovative enhancements NRCS should offer under CSP to improve participant's conservation performance.

A step-by-step explanation of how CSP works from sign-up to fulfillment of the conservation stewardship contract is as follows:

(1) CSP is available nationwide and sign-up will be continuous with announced ranking period cutoff dates.

(2) A producer self-screening checklist will be available at local NRCS field offices and on the NRCS Web site. Producers will complete the checklist independently to help them decide if they meet CSP eligibility requirements.

(3) Potential applicants who decide to apply for CSP complete a Contract Program Application Form, NRCS–CPA–1200, and submit information on their operation. The extent of an applicant's agricultural operation will be based on how the applicant represents their operation for other USDA programs.

(4) Once applicant and land eligibility are determined, the NRCS field office will assist the producer with completing the CMT resource inventory.

(5) CMT will estimate the level of environmental benefit to be achieved by the applicant. The CMT conservation performance scoring will enable NRCS to determine if the stewardship threshold requirement is met, rank applications, and establish payments.

(6) Applicants will be ranked relative to other applicants who face similar resource challenges in State-established ranking pools using conservation performance ranking scores.

(7) For approved applicants, NRCS will conduct on-site field verification to substantiate that conservation activity and production system information represented by the applicant was accurate.

(8) After the conservation system information is verified, NRCS and the applicant proceed to develop the conservation stewardship plan and contract.

(9) Upon approval, the contract will obligate the participant to achieve a higher level of conservation performance by installing additional activities scheduled in their conservation stewardship plan and to maintain the level of existing conservation performance identified at the time of application. For the initial sign-up, NRCS will consider a participant ''enrolled'' based on the fiscal year the application is submitted, once NRCS approves an applicant's contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

(10) NRCS will make payments as soon as practical after October 1 of each fiscal year for activities carried out in the previous fiscal year. A participant's annual payment is determined using the conservation performance estimated by the CMT, and computed by land-use type for enrolled eligible land. A supplemental payment is also available to a participant receiving annual payments who also agrees to adopt a resource-conserving crop rotation.

Summary of Provisions

The regulation is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and Subpart C—General Administration. Below is a summary of each section.

Subpart A—General Provisions

Section 1470.1 Applicability

Section 1470.1, ''Applicability,'' sets forth the purpose, procedures, and requirements of CSP. In paragraph (b), NRCS defines that the program's purpose is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities; and improving, maintaining, and managing existing conservation activities.

NRCS included paragraph (c) to specify where CSP assistance is available. CSP is available to eligible persons, legal entities, or Indian tribes in all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Paragraph (d) identifies that NRCS will provide CSP participants financial and technical assistance for the conservation, protection, and improvement of soil, water, and other related natural resources.

Section 1470.2 Administration

Section 1470.2, ''Administration,'' describes the roles of NRCS at the National and State levels. NRCS will make CSP available nationwide on a continuous application basis. NRCS will operate the program to achieve a national average rate of $18 per acre, which includes the costs of all financial and technical assistance, and any other expenses associated with program enrollment and participation. As directed by the 2008 Act, NRCS will establish a national target to set aside five percent of CSP acres for socially disadvantaged farmers or ranchers and an additional five percent of CSP acres for beginning farmers or ranchers. State conservationists will obtain advice from State Technical Committees and local working groups on State program technical policies, outreach efforts, and program issues.

Section 1470.3 Definitions

Section 1470.3, ''Definitions,'' sets forth definitions for terms used throughout this regulation. These definitions include: ''agricultural land,'' ''animal waste storage or treatment facility,'' ''applicant,'' ''beginning farmer or rancher,'' ''Chief,'' ''conservation district,'' ''conservation practice,'' ''Designated Conservationist,'' ''enrollment,'' ''field office technical guide,'' ''Indian tribe,'' ''Indian lands,'' ''joint operation,'' ''legal entity,'' ''liquidated damages,'' ''local working group,'' ''National Organic Program,'' ''Natural Resources Conservation Service,'' ''nonindustrial private forest land,'' ''operation and maintenance,'' ''participant,'' ''person,'' ''producer,'' ''Secretary,'' ''socially disadvantaged farmer or rancher,'' ''State Conservationist,'' ''State Technical Committee,'' ''technical assistance,'' and ''Technical Service Provider (TSP).'' Other definitions, such as: ''agricultural operation,'' ''conservation activities,'' ''conservation measurement tool,'' ''conservation stewardship plan,'' ''contract,'' ''enhancement,'' ''management measure,'' ''payment,'' ''priority resource concern,'' ''resource concern,'' ''resource-conserving crop rotation,'' and ''stewardship threshold'' are definitions established to implement CSP's authorizing legislation.

A number of these definitions are shared with other conservation programs administered by NRCS. The following definitions are unique or have special relevance to CSP implementation, or have been modified from how the term is defined in other NRCS conservation program rules:

The definition of ''*agricultural land*'' describes those areas identified by CSP's authorizing legislation—working agricultural land being actively managed for agricultural production purposes upon which CSP will be focused, including cropland, grassland, improved prairieland, and land used for agro-forestry. NRCS does not intend to exclude working lands such as cropped woodlands and marshes, but will consider those as cropland.

NRCS includes the definition of ''*agricultural operation*'' to specify an agricultural operation's parameters. An ''agricultural operation'' is defined as ''all agricultural land and other land as determined by NRCS, whether contiguous or noncontiguous: (1) Which is under the effective control of the applicant for the term of the proposed contract; and (2) which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.'' The term ''other land'' in this definition includes ineligible land identified in § 1470.6, incidental areas that are not in agricultural production, and developed areas on the farm or ranch such as farm headquarters, ranch sites, barnyards, feedlots, manure storage facilities, machinery storage areas, and material handling facilities.

The term ''*applicant*'' is defined as ''a person, legal entity, joint operation, or Indian tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.'' All applicants must establish records in the Farm Service Agency (FSA) farm records management system prior to submitting an application.

The term, ''*beginning farmer and rancher,*'' is the same as the definition used by other NRCS conservation programs, which adopt the definition established by 7 U.S.C. 1991(a), except that the definition incorporates the term nonindustrial private forest land to ensure policies pertaining to beginning farmers and ranchers include those producers having nonindustrial private forest land.

A definition for ''*conservation activity*'' is included to describe in a more comprehensive fashion the conservation systems, practices, or management measures needed to

address a resource concern or improve conservation performance.

A definition for ''*conservation measurement tool*'' refers to the procedures that NRCS will use to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance improvement.

The term ''*conservation stewardship plan*'' is defined as a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved by the participant. The definition clarifies that associated supporting information inventories the agricultural operation's resource concerns and existing conservation activities, establishes benchmark data, and identifies the participant's conservation objectives and will be maintained with the plan.

The term ''*enhancement*'' means a type of activity installed and adopted to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard. An example of an enhancement includes a grass-type cover crop used to scavenge nitrogen left in the soil after the harvest of a previous crop.

The term ''*enrollment*'' means for the initial sign-up for FY 2009, NRCS will consider a participant ''enrolled'' in CSP based on the fiscal year the application is submitted, once NRCS approves the participant's contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved. The acres enrolled for each fiscal year count against each year's annual 12.8 million acre enrollment limit.

The terms, ''*Indian Tribe*'' and ''*Indian lands*'' reflect the terms used by other NRCS conservation programs. An Indian Tribe is any ''Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional 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.'' NRCS adopts terminology ''Indian lands'' in an effort to be more inclusive of all lands held in trust by the United States for individual Indians or Indian Tribes, all land, the title to which is held by an individual Indian, Indian family, or Indian Tribe.

The term, ''*management measure,*'' is defined as one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or the treatment of natural resources.

The term ''*National Organic Program*'' has been inserted to refer to a program administered by the Agricultural Marketing Service. The rule contains provisions related to conservation activities associated with organic production. The National Organic Program is a national program which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically grown.

The term, ''*nonindustrial private forest land*'' is based on the definition in the 2008 Act. Nonindustrial private forest land is rural land that has existing tree cover or is suitable for growing trees; and is owned by an individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

NRCS includes the definition of ''*operation and maintenance*'' to identify that participants are expected to maintain existing conservation activities and additional conservation activities installed and adopted over the contract period.

The definition of ''*participant*'' reflects the 2008 Act's definition of ''person'' and ''legal entity'' and the definition used by other NRCS conservation programs. A participant is a ''person, legal entity, joint operation, or Indian Tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.''

NRCS defines the term ''*payment*'' to mean the financial assistance provided under the terms of the CSP contract.

NRCS includes the term, ''*person*'' to reflect the requirements of 7 CFR part 1400, the regulation which details CCC's payment limitation policies.

NRCS includes the term ''*priority resource concern,*'' which reflects the definition in the 2008 Act. A priority resource concern is a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local work groups, as a priority for a State, or the specific geographic areas within a State.

The term ''*producer*'' means a person or legal entity or joint operation who has an interest in the agricultural operation, according to part 1400 of this chapter, or is engaged in agricultural production or forest management.

The term ''*resource concern,*'' reflects the 2008 Act's ''resource concern'' definition. A resource concern ''means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.''

The term, ''*resource-conserving crop rotation*'' means a crop rotation that includes at least one resource-conserving crop that reduces soil erosion, improves soil fertility and tilth, interrupts pest cycles, retains soil moisture, and reduces the need for irrigation in applicable areas.

NRCS includes the term ''*socially disadvantaged farmer or rancher*'' that is based on the definition used by other NRCS conservation programs.

The term ''*stewardship threshold*'' means the level of natural resource conservation and environmental management required, as determined by NRCS using conservation measurement tools, to conserve and improve the quality and condition of a natural resource. The stewardship threshold is used to determine if an applicant meets the minimum treatment requirements to be eligible for CSP. NRCS guided its efforts to set stewardship thresholds by sustainable levels of natural resource treatment. For example, for the soil erosion resource concern, this criterion is met when the erosion rate from wind and water does not exceed the Soil Loss Tolerance (T).

NRCS includes the definition, ''*technical service provider (TSP),*'' to clarify that TSPs are used to provide technical services to program participants, in lieu of or on behalf of NRCS. A TSP is ''an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants, in lieu of or on behalf of NRCS.'' The regulations governing TSPs are found in 7 CFR part 652.

Section 1470.4 Allocation and Management

Section 1470.4, ''Allocation and management,'' addresses national allocations and how the proportion of eligible land will be used as the primary means to distribute CSP acres and associated funds among States. The Chief will also consider the extent and magnitude of conservation needs associated with agricultural production in each State, the degree to which CSP can help producers address these needs; and other considerations determined by the Chief to achieve equitable geographic distribution of program participation. NRCS is in the process of

developing State allocations according to the provisions in this section. After allocations are finalized NRCS will make information related to the allocation decisions available to the public. NRCS also seeks public comment on the use of these factors to distribute allocations among States.

Section 1470.5 Outreach Activities

Section 1470.5, ''Outreach activities,'' describes how NRCS will establish special program outreach activities at the National, State, and local levels. NRCS will undertake special outreach effort to the historically underserved producers which includes socially disadvantaged, beginning and limited resource farmers or ranchers. In addition, NRCS will continue to ensure that producers are not disadvantaged based on the size or type of their operation or production system. Special outreach efforts will be made to small-scale farms, specialty crop operations, and organic farms.

Section 1470.6 Eligibility Requirements

Section 1470.6, ''Eligibility requirements,'' sets forth the criteria for determining applicant and land eligibility.

Paragraph (a) details applicant eligibility criteria. To be eligible, at the time of application, an applicant must: Be the operator in the FSA farm records management system for the agricultural operation; have documented control of the land for the term of the proposed contract; and be in compliance with highly erodible land and wetland conservation provisions, and the Adjusted Gross Income provisions. It is the applicant's responsibility to supply needed information to assist NRCS in determining program eligibility and in ranking the application. NRCS may request from the applicant: conservation and production system records, tax documentation, evidence documenting control of the land, and information to verify an applicant's status as a beginning farmer or rancher or socially disadvantaged farmer or rancher, if applicable.

Paragraphs (b) and (c) set forth land eligibility criteria. Under CSP, a participant must enroll their entire agricultural operation. Eligible land for CSP includes private agricultural land, and agricultural Indian lands.

Nonindustrial private forest land is also eligible by special rule, but no more than 10 percent of the annual acres enrolled may be nonindustrial private forest land. An applicant designates by submitting a separate application if they want to offer the nonindustrial private forest land for funding consideration.

Land enrolled in the Conservation Reserve Program (7 CFR part 1410), Wetlands Reserve Program (7 CFR part 1467), Grasslands Reserve Program (7 CFR part 1415), and Conservation Security Program (7 CFR part 1469) are ineligible for CSP. The 2008 Act limits eligibility to ''private'' agricultural land; as such, land that is owned by a Federal, State, or local unit of government, with the exception of agricultural land under the jurisdiction of an Indian Tribe, is ineligible, regardless of the status of the operator. Additionally, a participant may not receive payment for land used for crop production after June 18, 2008, that had not been planted, considered to be planted, or devoted to crop production for at least four of the six years preceding that date, unless the land was: previously enrolled in the Conservation Reserve Program; maintained using long-term rotations, such as hayland in rotation; or incidental to the operation but needed for the efficient management of the operation. An example of land considered ''incidental to the operation'' that may be eligible for payment is land that had once been used for buildings and is now being used for crop production to square up a cropland field.

Section 1470.7 Enhancements and Conservation Practices

Section 1470.7, ''Enhancements and conservation practices,'' identifies that a participant's decisions describing the additional enhancements and conservation practices to be implemented under the CSP contract will be recorded in the conservation stewardship plan. NRCS will make public the enhancements and conservation practices that may be installed, adopted, maintained, and managed through CSP.

Section 1470.8 Technical Assistance

Section 1470.8, ''Technical assistance,'' explains that NRCS or other technical service providers (TSP) not directly affiliated with NRCS could provide the technical consultation for installing conservation activities under CSP. 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. 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.

Subpart B—Contracts and Payments

Section 1470.20 Application for Contracts and Selecting Offers From Applicants

Section 1470.20, ''Application for contracts and selecting offers from applicants,'' identifies procedures associated with application acceptance, contract application requirements, and the application evaluation process. Paragraph (a) clarifies that CSP applications will be accepted throughout the year, while paragraph (c) identifies that the State Conservationist or Designated Conservationist will rank applications at selected times of the year, as described more fully below.

Paragraph (b) defines contract application requirements. To be considered for funding, a contract application must meet the stewardship threshold for at least one resource concern and would, at a minimum, achieve or exceed the stewardship threshold for at least one priority resource concern by the end of the contract. The conservation measurement tool (CMT) is used to determine if the stewardship threshold has been met for one or more resource concerns. NRCS seeks public comment on whether meeting the stewardship threshold on one resource concern and one priority resource concern is adequate, or if that number should be greater than one. The contract application must also include a map, aerial photograph, or overlay that identifies the applicant's agricultural operation and delineates the eligible land offered for payment and associated acreage amounts.

The 2008 Act was prescriptive about application ranking factors and paragraph (c) identifies how contract applications will be evaluated. NRCS will conduct one or more ranking periods per year. It is intended that, to the extent practicable, at least one ranking period will occur in the first quarter of the fiscal year.

In evaluating CSP applications, the State Conservationist or Designated Conservationist will use the CMT to estimate existing and proposed conservation performance and rank accordingly. Applications will be ranked based on: The level of conservation treatment proposed on all priority resource concerns; the degree to which the proposed conservation treatment on all applicable priority resource concerns effectively increases conservation performance based to the maximum extent practicable on the

CMT; the number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold level by the end of the contract; the extent to which other resource concerns in addition to priority resource concerns may will be addressed to meet or exceed the stewardship threshold by the end of the contract period; and the extent to which the actual and anticipated environmental benefits from the contract are provided at the least cost relative to other similarly beneficial contract offers. NRCS requests public comment on the appropriate weighting of these five ranking factors that will maximize environmental benefits while maintaining consistency with the statutory purposes of the program. NRCS will consider these public comments when revising the weighting of these ranking factors when the CSP rule is finalized.

Paragraph (d) provides the Chief may develop additional criteria for evaluating applications to ensure National, State, and local conservation priorities are addressed. Additional criteria have not been developed but may be considered in the future.

Paragraph (e) specifies that the State Conservationist, with advice from the State Technical Committee and local work groups, will identify not less than three nor more than five priority resource concerns for a State, or the specific geographic areas within a State. Examples of priority resource concerns include: soil quality, soil erosion, water quality, water quantity, air, plants, animals, and energy. Public comment is requested on whether or not at least one of the priority resource concerns should be identified specifically to address wildlife habitat issues.

Paragraph (f) has been added to describe how State or geographic area boundaries, used by State Conservationists to identify priority resource concerns, will also be used to establish ranking pool boundaries so that applicants will be ranked relative to other applicants who share similar resource challenges. For example, a State with diverse natural resource conditions and environmental factors may have multiple geographic areas established based on the distinct sets of priority resource concerns identified within each of these areas. The boundaries of these geographic areas will serve as the boundaries of ranking pools, within which applicants' operations would compete for funding approval. Nonindustrial forest land will compete in separate ranking pools from agricultural land. Paragraph (f)(3) enables State Conservationists to set up pools for conservation access for socially disadvantaged farmers or ranchers and beginning farmers or ranchers. Paragraph (f) also specifies that in any fiscal year, acres allocated to a funding pool that are not enrolled by a date determined by the State Conservationist may be reallocated, with associated funds, for use in that fiscal year under CSP.

Paragraph (g) specifies that the State Conservationist or Designated Conservationist will make application approval determinations during established ranking periods based on eligibility and ranking score.

Section 1470.21 Contract Requirements

Section 1470.21, ''Contract requirements,'' identifies elements contained within a contract and the responsibilities of a CSP contract participant. A participant must enter into a CSP contract, including a conservation stewardship plan, to enroll their eligible land and to receive payment. The CSP contract will: Provide for payments over a period of five years; incorporate by reference the conservation stewardship plan; state the payment to be issued by NRCS; and incorporate all provisions as required by law or statute. In order to receive payment and be in compliance with the CSP contract, the participant will agree to implement the conservation stewardship plan, operate and maintain the conservation activities, maintain and make available appropriate records documenting applied conservation activities and production system information, not engage in any action on the enrolled land that would interfere with the purposes of the conservation stewardship contract, and comply with terms and documents incorporated by reference in the contract.

Section 1470.22 Conservation Stewardship Plan

Section 1470.22, ''Conservation stewardship plan,'' describes that NRCS will use the conservation planning process to encourage producers to address 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.

Associated information maintained with the participant's conservation stewardship plan includes: An inventory of resource concerns; benchmark data on the condition of the existing conservation activities; the participant's conservation objectives; a plan map; and other information determined appropriate by NRCS. Where a participant wishes to pursue organic certification, their conservation stewardship plan information will document the participant's transition to or participation in the National Organic Program. If a participant is approved for the on-farm research and demonstration or pilot testing option, a research, demonstration or pilot testing job sheet consistent with design protocols and application procedures established by NRCS will be included in the associated information.

Section 1470.23 Conservation System Operation and Maintenance

Section 1470.23, ''Conservation system operation and maintenance,'' addresses the participant's responsibility for operating and maintaining existing conservation activities on the agricultural operation to at least the level of conservation performance identified at the time 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.

Section 1470.24 Payments

Section 1470.24, ''Payments,'' describes the types of payments issued under CSP, how payments will be derived, and payment limitations. NRCS will provide annual payments for installing and adopting additional conservation activities, and improving, maintaining, and managing existing activities. A participant's annual payment will be determined based on expected environmental benefits, determined by estimating conservation performance improvement using the CMT, and computed by land-use type for enrolled eligible land.

If operational adjustments are needed during the contract, the participant may replace enhancements with similar enhancements, provided the resulting conservation performance improvement is equal to or better than the participant's additional enhancements agreed upon at enrollment. A replacement that results in a decline below the original conservation performance level will not be allowed. A participant may be compensated through their annual payment for on-farm research and demonstration activities, or pilot testing of new technologies or innovative conservation activities.

In establishing annual payment rates, NRCS will consider: estimated costs incurred by the participant associated with planning, design, materials,

installation, labor, management, maintenance, and training; estimated income foregone by the participant; and expected conservation performance increase as determined using the CMT. Consideration of these factors in CSP payment levels is intended to make them compliant with World Trade Organization green box requirements, which in brief call for payments to be based on producer cost incurred and income foregone.

A participant may receive supplemental payments when he or she adopts a resource-conserving crop rotation. To be eligible for a supplemental payment, the participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract. An example of a resource-conserving crop rotation would be adding alfalfa to a small grain, row crop rotation.

NRCS will make CSP payments as soon as practicable after October 1 for the previous fiscal year's activities. This retrospective payment approach will allow NRCS to field-verify applied conservation activities prior to contract obligation and payment.

A CSP payment to a participant shall not be provided for conservation practices or enhancements applied with financial assistance through other USDA conservation programs, the installation or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations, or conservation activities for which there is no cost incurred or income forgone by the participant.

The 2008 Act requires that a person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed $200,000 for all contracts entered into during any 5-year period. The regulation includes an annual payment limit of $40,000 during any fiscal year to a person or legal entity. This annual limit was added to reduce the chance that participants of large contracts would reach their $200,000 five-year limit early in their contract term and have reduced incentive to meet their obligations over the five year life of the contract. NRCS will monitor person or legal entity payment limitations through direct attribution to real persons.

The absence of a contract payment limitation in the 2008 Act caused concern because of the potential for excessively large contracts. Since each member of a joint operation is treated as a separate person or legal entity with payments directly attributed to them, contracts with a joint operation could be very large. For example, a contract with a joint operation with five members who each reach their $200,000 per person or legal entity limit could have contract payments of $1 million. To prevent large contracts of this nature, the rule includes a contract limit of $200,000 over the term of the initial contract period.

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

Section 1470.25 Contract Modifications and Transfers of Land

Section 1470.25, ''Contract modifications and transfers of land,'' provides that NRCS will not modify a contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved for renewal. The section further clarifies the participant's contract responsibilities as they relate to loss of control of land and the obligations of the transferee. In particular, paragraph (c) identifies that it is the participant's responsibility to notify NRCS of any voluntary or involuntary land transfer. If all or part of the land under contract is transferred, the contract terminates with respect to the transferred acres unless the transferee is eligible for CSP payments and agrees to accept all contractual obligations.

Section 1470.26 Contract Renewal

From Section 1470.26, ''Contract renewal,'' NRCS will allow a participant to renew the contract for one additional five-year period if they meet specific criteria. Paragraph (b) contains the criteria, which include that the participant must, as determined by NRCS:

- Be in compliance with the terms of their initial contract;
- Add any newly-acquired eligible land that is part of their operation and meets minimum treatment criteria;
- Meet stewardship thresholds for additional priority resource concerns; and
- Agree to adopt conservation activities.

Section 1470.27 Contract Violations and Termination

Section 1470.27, ''Contract violations and termination,'' addresses the procedures that NRCS will take when a violation has occurred or a contract termination is needed. Specifically, paragraph (a) provides that the State Conservationist, individually or by mutual consent, may terminate a contract when it is in the public interest or where the participants are unable to comply with the terms of the contract as a result of conditions beyond their control.

Paragraph (b) states that the State Conservationist may allow the participant to retain a portion of any payments received in the case of hardship or, as appropriate, to the effort the participant has made to comply with the contract. When a participant claims that the reason for the violation is a form of hardship, the claim must be documented and have occurred after the participant entered into the contract.

When a participant makes a hardship claim, the participant will provide documentation that details the hardship, when the hardship began, and why the hardship has prevented fulfilling requirements of the contract. Examples of hardship include: natural disasters, major illness, bankruptcy, and matters of public interest (*e.g.,* military service, public utilities' easement or condemnation of land, or environmental and archeological concerns).

Paragraph (c) specifies that if NRCS determines that a participant is in violation, the participant will be given a period of time to correct the violation. If a participant continues to violate the contract, NRCS may terminate the contract.

NRCS may terminate a contract immediately if, in accordance with paragraph (d) of this section, the participant has filed a false claim, engaged in a scheme or device, or engaged in actions that are sufficiently purposeful or negligent to warrant a termination without delay.

Paragraph (e) specifies that if NRCS terminates a contract, the participant forfeits all rights to future payments. Paragraph (e) provides notice to the public that NRCS has the ability to collect liquidated damages, along with payments received, plus interest. Additionally, participants who violate CSP contracts may be determined ineligible for future CSP funding or

funding in other programs administered by NRCS.

Subpart C—General Administration

Section 1470.30 Fair Treatment of Tenants and Sharecroppers

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

Section 1470.31 Appeals

Section 1470.31, ''Appeals,'' notifies NRCS applicants and participants that they have the right to appeal in accordance with the processes and procedures outlined in 7 CFR 11 and 614. Matters of general applicability, such as payment rates and limits, and eligible conservation activities, are not subject to appeal.

Section 1470.32 Compliance With Regulatory Measures

Section 1470.32, ''Compliance with regulatory measures,'' is added to notify participants that they are responsible for obtaining necessary authorities, rights, easements, permits, and other approvals necessary to implement, operate, and maintain items specified in the conservation stewardship plan. Additionally, participants are responsible for compliance with all laws and for all effects or actions resulting from the implementation of the CSP contract.

Section 1470.33 Access to Operating Unit

Section 1470.33, ''Access to operating unit,'' is added to notify 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 program requirements during the term of the contract. NRCS will attempt to contact the participant prior to entering the property.

Section 1470.34 Equitable Relief

Section 1470.34, ''Equitable relief,'' 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 or have reason to know that the action or advice was erroneous. This section also clarifies that liability for any action or advice taken on behalf of the TSP will be assumed by the TSP.

Section 1470.35 Offsets and Assignments

Section 1470.35, ''Offsets and assignments,'' specifies any payment or portion of a payment will be issued without regard to any claim or lien by a creditor, except for agencies of the United States Government. A participant may assign any payment in accordance with the provisions of 7 CFR part 1404.

Section 1470.36 Misrepresentation and Scheme or Device

Section 1470.36, ''Misrepresentation and scheme or device,'' outlines the remedies available to NRCS should NRCS determine that an applicant or participant misrepresented any fact affecting a CSP determination, adopted any scheme or device that tends to defeat the purpose of the program, deprives any tenant or sharecropper of payments to which they otherwise would be entitled, or made any fraudulent representation. Among the remedies available, NRCS may have their interest in all CSP contracts terminated, and determine them ineligible for future NRCS-administered conservation program funding.

Section 1470.37 Environmental Credits for Conservation Improvements

Section 1470.37, ''Environmental credits for conservation improvements,'' provides NRCS' policy on environmental credits. NRCS believes that environmental benefits can be achieved by implementing conservation activities funded through CSP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. These environmental credits must be compatible with the purposes of the CSP contract. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that operation and maintenance requirements for CSP-funded improvements are met, consistent with § 1470.21 and § 1470.23. Where actions may impact the land and conservation activities under a CSP contract, NRCS will at the request of the participants, assist with the development of an O&M compatibility assessment.

List of Subjects in 7 CFR Part 1470

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

■ For the reasons stated above, the Commodity Credit Corporation adds Part 1470 of Title 7 of the Code of Federal Regulations to read as follows:

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

Subpart A—General Provisions

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

Subpart B—Contracts and Payments

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

Subpart C—General Administration

1470.30 Fair treatment of tenants and sharecroppers.
1470.31 Appeals.
1470.32 Compliance with regulatory measures.
1470.33 Access to agricultural operation.
1470.34 Equitable relief.
1470.35 Offsets and assignments.
1470.36 Misrepresentation and scheme or device.
1466.37 Environmental credits for conservation improvements.

Authority: 16 U.S.C. 3838d–3838g.

Subpart A—General Provisions

§ 1470.1 Applicability.

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

(b) The purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by:

(1) Undertaking additional conservation activities; and

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

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

Commonwealth of the Northern Mariana Islands.

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

§ 1470.2 Administration.

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

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

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

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

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

(d) NRCS will, to the maximum extent practicable, manage CSP to achieve a national average rate of $18 per acre, which includes the costs of all financial and technical assistance, and any other expenses associated with program enrollment and participation.

(e) NRCS will establish a national target to set aside five percent of CSP acres for socially disadvantaged farmers or ranchers, and an additional five percent of CSP acres for beginning farmers or ranchers.

(f) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program issues, including the identification of priority resource concerns for a State, or the specific geographic areas within a State;

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

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

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

§ 1470. 3 Definitions.

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

Agricultural land means cropland, rangeland, and pastureland on which agricultural products, or livestock are produced and resource concerns may be addressed. Agricultural lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS.

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

(1) Which is under the effective control of the applicant for the term of the proposed contract; and

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

Animal waste storage or treatment facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a person, legal entity, joint operation, or Indian Tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.

Beginning farmer or rancher means:

(1) An individual or legal entity who:

(i) Has not operated a farm, ranch, or nonindustrial private forest land, or who has operated a farm, ranch, or nonindustrial private forest land for not more than 10 consecutive years (this requirement applies to all members of a legal entity); and

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

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

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

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

Conservation activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS.

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

Conservation measurement tool means procedures developed by NRCS, to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance improvement.

Conservation planning means using the planning process outlined in the applicable National Planning Procedures Handbook of the United States Department of Agriculture.

Conservation practice means a specified treatment, such as a structural or vegetative practice or management technique, commonly used to meet a specific need in planning and carrying out soil and water conservation programs for which standards and specifications, including interim standards and specifications, have been developed. Conservation practices are in the NRCS Field Office Technical Guide (FOTG), Section IV, which is based on the National Handbook of Conservation Practices (NHCP).

Conservation stewardship plan means a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant's conservation objectives will be maintained with the plan.

Conservation system means a combination of conservation practices,

management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

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

Designated Conservationist means an NRCS employee whom the State Conservationist has designated as responsible for CSP at the local level.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.

Enrollment means for the initial signup for FY2009, NRCS will consider a participant ''enrolled'' in CSP based on the fiscal year the application is submitted, once NRCS approves the participant's contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Indian lands means all lands held in trust by the United States for individual Indians or Indian Tribes, or all land titles held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or lands subject to the rights of use, occupancy and/or benefit of certain Indian Tribes. This term also includes lands for which the title is held in fee status by Indian Tribes, and the U.S. Government-owned land under the Bureau of Indian Affairs jurisdiction.

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

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

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law.

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

Local working group means the advisory body as described in 7 CFR part 610.

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

National Organic Program means the program, administered by the Agricultural Marketing Service, USDA, 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 the 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 that has existing tree cover or is suitable for growing trees, and is owned by an individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive 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 application, and maintain additional conservation activities installed and adopted over the contract period.

Participant means a person, legal entity, joint operation, or Indian Tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

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

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

Priority resource concern means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local working groups, as a priority for a State, or the specific geographic areas within a State.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to part 1400 of this chapter, or who is engaged in agricultural production or forest management.

Resource concern means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.

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

(1) A perennial grass, legume, or grass/legume grown for use as forage, seed for planting, or green manure;

(2) A high residue producing crop; or

(3) A cover crop following an annual crop.

Resource-conserving crop rotation means a crop rotation that:

(1) Includes at least one resource conserving crop as determined by the State Conservationist;

(2) Reduces erosion;

(3) Improves soil fertility and tilth;

(4) Interrupts pest cycles; and

(5) Reduces depletion of soil moisture or otherwise reduces the need for irrigation in applicable areas.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a producer who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group, without regard to their individual qualities. These groups consist of American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics. Gender alone is not a covered group for the purposes of NRCS conservation programs. A socially disadvantaged applicant is an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement CSP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

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

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

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

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with 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, or public agency certified by NRCS to provide technical services to program participants, in lieu of or on behalf of NRCS as referenced in 7 CFR part 652.

§ 1470.4 Allocation and management.

(a) The Chief will allocate acres and associated funds to State Conservationists, based:

(1) Primarily on each State's proportion of eligible land to the total amount of eligible land in all States; and

(2) On consideration of—

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

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

(iii) Other considerations determined by the Chief, to achieve equitable geographic distribution of program participation.

(b) In any fiscal year, acres allocated to a State that are not enrolled by a date determined by the Chief, may be reallocated with associated funds to another State for use in that fiscal year under CSP.

§ 1470.5 Outreach activities.

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

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

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

§ 1470.6 Eligibility requirements.

(a) *Eligible applicant.* To be eligible to participate in CSP, at the time of application, an applicant must meet all the following requirements:

(1) Be the operator in the Farm Service Agency (FSA) farm records management system for the agricultural operation being offered for enrollment in the program. Potential applicants that are not in the FSA farm records management system must establish records with FSA prior to application. Potential applicants whose records are not current in the FSA farm records management system must update those records with FSA prior to application;

(2) Have documented control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

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

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

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

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

(b) *Eligible land.* A contract application must include the eligible land on an applicant's entire agricultural operation, except as identified in paragraph (b)(3) of this section. The land as described below is part of the agricultural operation, and eligible for enrollment and payment under CSP:

(1) Private agricultural land;

(2) Agricultural Indian lands; and

(3) Nonindustrial private forest land (NIPF).

(i) By special rule in the statute, NIPF is eligible land.

(ii) No more than 10 percent of the acres enrolled nationally in any fiscal year may be NIPF.

(iii) The applicant will designate by submitting a separate application if they want to offer NIPF for funding consideration.

(iv) If designated for funding consideration, then the NIPF component of the operation will include all the applicant's NIPF. If not designated for funding consideration, then the applicant's NIPF will not be part of the agricultural operation.

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

(1) Land enrolled in the Conservation Reserve Program, 7 CFR part 1410;

(2) Land enrolled in the Wetlands Reserve Program, 7 CFR part 1467;

(3) Land enrolled in the Grassland Reserve Program, 7 CFR part 1415;

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

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

(6) Land used for crop production after June 18, 2008, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless that land—

(i) Had previously been enrolled in the Conservation Reserve Program,

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

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

§ 1470.7 Enhancements and conservation practices.

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

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

§ 1470.8 Technical and other assistance.

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

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

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

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

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Eligible applicants may submit an application to enroll eligible land into CSP on a continuous basis.

(b) Eligibility. To be eligible to participate in CSP, an applicant must submit to the Designated Conservationist for approval, a contract application that:

(1) Indicates the applicant's conservation activities, at the time of application, are meeting the stewardship threshold for at least one resource concern;

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

(i) Installing and adopting additional conservation activities, and

(ii) Improving, maintaining, and managing conservation activities present on the agricultural operation at the time the contract application is accepted by NRCS;

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

(i) Identifies the applicant's agricultural operation and/or NIPF component of the operation, and

(ii) Delineates eligible land offered for payment with associated acreage amounts; and

(4) If the applicant is applying for on-farm research and demonstration activities or for pilot testing, describes the nature of the research, demonstration or pilot testing in a manner consistent with design protocols and application procedures established by NRCS.

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

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

(2) In evaluating CSP applications, the State Conservationist or Designated Conservationist will rank applications based on the following factors, using the conservation measurement tool, to the maximum extent practicable—

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

(ii) Degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance;

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

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

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

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

(d) *State and local priorities.* The Chief may develop and use additional criteria for evaluating applications that are determined necessary to ensure that national, State, and local conservation priorities are effectively addressed.

(e) *Application.* The State Conservationist will take the following actions to facilitate the evaluation and ranking of applications:

(1) Implement the use of the conservation measurement tool to estimate existing and proposed conservation performance;

(2) Identify not less than 3 nor more than 5 priority resource concerns for a State, or the specific geographic areas within a State, with advice from the State Technical Committee and local working groups; and

(3) Establish ranking pools for application evaluation purposes.

(f) *Ranking pools.* Ranking pools will be established based on the same State or geographic area boundaries used to identify priority resource concerns so applicants will be ranked relative to other applicants who share similar resource challenges.

(1) NIPF will compete in ranking pools separate from agricultural land. An applicant with both NIPF and agricultural land will have the options to submit:

(i) One application for NIPF;

(ii) One application for agricultural land; or

(iii) Two applications, one for each land type.

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

(3) Within each established geographic area, the State Conservationist will set up special pools for conservation access for certain farmers or ranchers, including:

(i) One pool for socially disadvantaged farmers or ranchers; and

(ii) One pool for beginning farmers or ranchers.

(4) Applicants who want their application considered in the pool for socially disadvantaged farmers or ranchers or beginning farmers or ranchers will designate that intent on their application and provide the required information.

(5) In any fiscal year, acres and associated funds allocated to a ranking pool or pool that are not enrolled by a date determined by the State Conservationist, may be reallocated within the State for use in that fiscal year under CSP.

(g) *Application approval.* The State Conservationist or Designated

Conservationist will make application approval determinations during established ranking periods based on eligibility and ranking score. An eligible application may be approved for funding after a determination of the application's ranking priority.

§ 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be developed in accordance with § 1470.22, the State Conservationist or designee shall enter into a conservation stewardship contract with the participant to enroll the eligible land to receive payment.

(b) The conservation stewardship contract shall:

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

(2) Incorporate by reference the conservation stewardship plan;

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

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

(i) Implement the conservation stewardship plan approved by NRCS during the term of the contract,

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

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

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

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with § 1470.25,

(vi) Maintain, and make available to NRCS upon request, appropriate records documenting applied conservation activity and production system information, and providing evidence of the effective and timely implementation of the conservation stewardship plan and contract, and

(vii) Not engage in any action during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;

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

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

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

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

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

§ 1470.22 Conservation stewardship plan.

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

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

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

(1) Identify and inventory resource concerns;

(2) Establish benchmark data on the condition of existing conservation activities;

(3) Document the participant's conservation objectives to reach and exceed stewardship thresholds;

(4) Include a plan map delineating enrolled land with associated acreage amounts receiving program payments;

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

(6) Include in the case where a participant is approved for the on-farm research and demonstration or pilot testing option, a research, demonstration or pilot testing plan consistent with design protocols and application procedures established by NRCS; and

(7) Contain other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

The participant will operate and maintain 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 and additional activities installed and adopted over the term of the conservation stewardship contract.

§ 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide an annual payment under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing activities.

(1) To receive an annual payment, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one enhancement must be scheduled, installed, and adopted in the first year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third year of the contract; and

(ii) Maintain at least the level of existing conservation performance identified at the time of application for the conservation stewardship contract period.

(2) A participant's annual payment will be determined using the conservation performance estimated by the conservation measurement tool, and computed by land-use type for enrolled eligible land.

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

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

(ii) Income foregone by the participant; and

(iii) Expected environmental benefits, determined by estimating conservation performance improvement using the conservation measurement tool.

(4) The annual payment method will accommodate some participant operational adjustments without the need for contract modification.

(i) Enhancements may be replaced with similar enhancements as long as the conservation performance estimated by the conservation measurement tool is equal to or better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will not be allowed.

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

(5) Enhancements may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt a resource-conserving crop rotation.

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

(2) A participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third year of the contract and planted on all rotation acres by the fifth year of the contract.

(3) The supplemental payment rate will be based, to the maximum extent practicable, on costs incurred and income foregone by the participant and expected environmental benefits, determined by estimating conservation performance improvement using the conservation measurement tool.

(c) *On-farm research and demonstration or pilot testing.* A participant may be compensated through their annual payment for:

(1) On-farm research and demonstration activities; or

(2) Pilot testing of new technologies or innovative conservation activities.

(d) *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.

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

(1) Conservation practices or enhancements applied with financial assistance through other USDA conservation programs;

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

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

(f) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed $40,000 during any fiscal year for all CSP contracts entered into, and $200,000 for all CSP contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(g) *Contract limit.* Each conservation stewardship contract will be limited to $200,000 over the term of the initial contract period.

(h) *Payment limitation provisions for Indians for Indians represented by the BIA.* With regard to contracts with individual Indians or Indians represented by BIA, payments exceeding the payment limitation may be made to the Tribal participant if a BIA or Tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by social security or tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation activity implementation.

(i) *Requirements for payment.* To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' social security numbers and percentage interest in the joint operation or legal entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(j) *Unique tax identification numbers.* Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other CSP contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of § 1470.36.

(k) *Payment data.* NRCS will maintain detailed and segmented data on CSP contracts and payments to allow for quantification of the amount of payments made for:

(1) Installing and adopting additional activities;

(2) Improving, maintaining, and managing existing activities;

(3) Participation in research and demonstration, or pilot projects; and

(4) Development and periodic assessment and evaluation of conservation stewardship plans developed under this rule.

§ 1470.25 Contract modifications and transfers of land.

(a) NRCS may allow a participant to modify a conservation stewardship contract if NRCS determines that the modification is consistent with achieving the purposes of the program.

(b) NRCS will not allow a participant to modify a conservation stewardship contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved by NRCS for renewal.

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

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

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

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

(ii) The transferee meets the eligibility requirements of the program.

§ 1470.26 Contract renewal.

(a) At the end of an initial conservation stewardship contract, NRCS will allow a participant to renew the contract to receive payments for one additional five-year period, subject to the availability of funds, if they meet criteria from paragraph (b) of this section.

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

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

(2) Add any newly acquired eligible land that is part of the agricultural operation and meets minimum treatment criteria as established and determined by NRCS;

(3) Meet stewardship thresholds for additional priority resource concerns as determined by NRCS; and

(4) Agree to adopt conservation activities as determined by NRCS.

§ 1470.27 Contract violations and termination.

(a) The State Conservationist may terminate, or by mutual consent with the participants, terminate a contract where:

(1) The participants are unable to comply with the terms of the contract as the result of conditions beyond their control; or

(2) Contract termination, as determined by the State Conservationist, is in the public interest.

(b) If a contract is terminated in accordance with the provisions of paragraph (a) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the contract terms or documents incorporated therein, NRCS shall give the participant a period of time, as determined by NRCS, to correct the violation and comply with the contract terms and attachments thereto. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

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

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

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

(3) Engaged in actions that are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating CSP contracts may be determined ineligible for future NRCS-administered conservation program funding.

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

(2) NRCS will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case.

(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

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

§ 1470.31 Appeals.

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

§ 1470.32 Compliance with regulatory measures.

Participants shall 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 shall 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 will have the right to enter an agricultural operation for the purposes of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access shall 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 shall make an effort to contact the participant prior to the exercise of this provision.

§ 1470.34 Equitable relief.

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

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

§ 1470.35 Offsets and assignments.

(a) Any payment or portion thereof due any participant under this part shall 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 shall be applicable to contract payments.

(b) Any participant entitled to any payment may assign any 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 cancelled immediately.

(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall 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 shall 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 shall:

(1) Have their interest in all CSP contracts terminated; and

(2) In accordance with § 1470.27(e), may be determined by NRCS to be ineligible for future NRCS-administered conservation program funding.

§ 1470.37 Environmental credits for conservation improvements.

NRCS believes that environmental benefits will be achieved by implementing conservation activities funded through CSP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. These environmental credits must be compatible with the purposes of the contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for CSP-funded improvements are met, consistent with §§ 1470.21 and 1470.23. Where actions may impact the land and conservation activities under a CSP contract, NRCS will at the request of the participant, assist with the development of an O&M compatibility assessment prior to the participant entering into any credit agreement.

Signed this 21st day of July 2009, in Washington, DC.

Dave White,

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

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FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 2009–17]

ELECTION ASSISTANCE COMMISSION

11 CFR Part 9428

Reorganization of National Voter Registration Act Regulations

AGENCY: Federal Election Commission; Election Assistance Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission (FEC) and the Election Assistance Commission (EAC) are jointly taking action to transfer regulations implementing the National Voter Registration Act of 1993 (NVRA) from the FEC to the EAC. The Help America Vote Act of 2002 transferred the FEC's former statutory authority regarding the NVRA regulations to the EAC. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: This rule is effective August 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Tamar Nedzar, Attorney, Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, (202) 566–3100 or (866) 747–1471; or Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joshua S. Blume, Attorney, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The National Voter Registration Act of 1993 (''NVRA'') [1] required the Federal Election Commission, in consultation with the chief election officers of the States, to develop a mail voter registration application form for elections to Federal office, and to submit to Congress no later than June 30 of each odd-numbered year (beginning June 30, 1995) a report that assesses the impact of the NVRA and recommends improvements in Federal and State procedures, forms, and other matters affected by the NVRA. 42 U.S.C. 1973gg–7(a)(2), (a)(3) (1993). The NVRA also assigned to the FEC the responsibility of prescribing, in consultation with the chief election officers of the States, such regulations as are necessary to carry out the aforementioned functions. 42 U.S.C. 1973gg–7(a)(1) (1993). The FEC issued regulations implementing these NVRA requirements on June 23, 1994.[2] These regulations are all currently codified in Part 8 of title 11, Chapter 1 of the Code of Federal Regulations (''11 CFR Part 8'').

Section 802 of the Help America Vote Act of 2002 (''HAVA'') [3] transferred the FEC's responsibilities under the NVRA to the EAC—an independent Federal agency created by HAVA[4] with responsibilities related to various aspects of Federal election administration. 42 U.S.C. 15532.[5] Accordingly, in order to facilitate the EAC's exercise of its statutory authority, the FEC is transferring the regulations implementing Section 9(a) (42 U.S.C. 1973gg–7(a)) of the NVRA to the EAC.

Transfer and Redesignation of Part 8

The FEC and the EAC, through this joint final rule, are removing the regulations in 11 CFR part 8 and simultaneously recodifying them in Chapter II of Title 11, which houses regulations created and administered by the EAC. Part 8 is simultaneously redesignated as Part 9428. Accordingly, 11 CFR 8.1 through 8.7 are redesignated as new 11 CFR 9428.1 through 9428.7. This is illustrated in a table below.

[1] Pub. L. 103–31, 107 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* (1993).

[2] 59 FR 32323 (June 23, 1994).

[3] Pub. L. 107–252, 116 Stat. 1726, 42 U.S.C. 15532 (2002).

[4] 42 U.S.C. 15321.

[5] ''There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under section 9(a) of the National Voter Registration Act of 1993 before the date of the enactment of this Act.'' HAVA was enacted on October 29, 2002.