

Commodity Credit Corporation, USDA

§ 1469.1

§ 1468.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

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

§ 1468.35 Misrepresentation and scheme or device.

(a) 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 CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such appli-

cant or participant with respect to CFO contracts.

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

- Sec.
- 1469.1 Applicability.
- 1469.2 Administration.
- 1469.3 Definitions.
- 1469.4 Significant resource concerns.
- 1469.5 Eligibility requirements.
- 1469.6 Enrollment criteria and selection process.
- 1469.7 Benchmark condition inventory and conservation stewardship plan.
- 1469.8 Conservation practices and activities.
- 1469.9 Technical assistance.

Subpart B—Contracts and Payments

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

Subpart C—General Administration

- 1469.30 Fair treatment of tenants and sharecroppers.
- 1469.31 Appeals.
- 1469.32 Compliance with regulatory measures.
- 1469.33 Access to agricultural operation.
- 1469.34 Performance based on advice or action of representatives of NRCS.
- 1469.35 Offsets and assignments.
- 1469.36 Misrepresentation and scheme or device.

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

SOURCE: 69 FR 34522, June 21, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico,

§ 1469.2

7 CFR Ch. XIV (1-1-05 Edition)

Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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

§ 1469.2 Administration.

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

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

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

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

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

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

§ 1469.3 Definitions.

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

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

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

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

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

(ii) In the case of a contract with an entity, all members must materially

and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

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

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

Chief means the Chief of NRCS, USDA or designee.

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

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corpora-

tion program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831-3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

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

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

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

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

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

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

Enrollment categories means a classification system used to sort out applications for payment. The enrollment

category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

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

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop lines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at <http://www.nrcs.usda.gov/technical/efotg/>.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

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

Incidental forest land means forested land that includes all nonlinear forested riparian areas (*i.e.*, bottomland

forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standard will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

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

Indian trust lands means real property in which:

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

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

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

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

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the

most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

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

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

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

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

Maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures

taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

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

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in 1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in 1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and has signed a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

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

Practice life span means the time period in which the conservation practices are to be used and maintained for

their intended purposes as defined by NRCS technical references.

Priority resource concern means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

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

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

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

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fer-

tility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

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

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

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

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

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

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

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

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

Commodity Credit Corporation, USDA

§ 1469.5

Stewardship payment means the CSP base payment component of the payment as described in 1469.23(a).

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

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

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

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

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

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

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

Wetlands Reserve Program (WRP) means the Commodity Credit Corpora-

tion program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837-3837f.

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) Applicants may submit only one application for each sign-up. Producers who have an active CSP contract are not eligible to submit another application.

(c) Eligible applicants. To be eligible to participate, an applicant must—

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

(2) Have control of the land for the life of the proposed contract period.

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

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

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available

§ 1469.5

7 CFR Ch. XIV (1-1-05 Edition)

for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations).

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

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

(d) Eligible land. (1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

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

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

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

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural operation such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

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

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

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

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

(v) Land referred to in paragraphs (d)(2)(i), (ii), (iii), and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

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

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (1)(d)(iv) of this section, and other lands, identified in paragraph (1)(d)(v) of this section under the control of the participant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) Conservation standards. (1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment meets or exceeds the quality criteria according to the NRCS technical guides for these specific resource considerations: nutrients, pesticides, salinity and sediment for surface waters and nutrients, pesticides, and salinity for groundwater.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance, proper livestock distribution, and timing of use and managing livestock access to water courses.

(4) The minimum level of treatment for Tier III.

(i) The minimum level of treatment for Tier III is meeting the quality criteria for the local NRCS FOTG for all existing resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive; and

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use efficiency value of at least 50%.

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5.

(5) In the instance of a significant natural event, such as drought, wild-fire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

§ 1469.6 Enrollment criteria and selection process.

(a) Selection and funding of priority watersheds. (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues *e.g.* location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

§ 1469.6

7 CFR Ch. XIV (1-1-05 Edition)

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

(b) Enrollment categories. The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories will be defined by criteria related to resource concerns and levels of historic conservation treatment, and the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

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

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

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

(ii) Targeting program participation for Limited Resource Producers;

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

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

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

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

(c) Sign-up process. (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to

the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in §1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in §1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in §1469.21;

(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;

(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;

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

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

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

(d) Selection of contracts. (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category based on the criteria specified in the sign-up notice. Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations. NRCS will determine in which Tier the participant is eligible to participate, and will notify applicants of the determination.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the group of contracts funded in the given sign-up, NRCS will make payments as described in the contract in return for their implementation and/or

Commodity Credit Corporation, USDA

§ 1469.8

maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

§ 1469.7 Benchmark condition inventory and conservation stewardship plan.

(a) The benchmark condition inventory must include:

(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage.

(2) A description of the applicant's production system(s) on the agricultural operation to be enrolled;

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

(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans; and

(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures.

(6) A list of enhancements that the producer may be willing to undertake as part of their contract.

(b) Conservation stewardship plan. (1) The conservation stewardship plan must include:

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

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

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

(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;

(v) A description and implementation schedule of:

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

and with the requirements of the sign-up;

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

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

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

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

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

(viii) Other information determined appropriate by NRCS and described to the applicant.

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

(4) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

§ 1469.8 Conservation practices and activities.

(a) Conservation practice and activity selection. (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief's designee provides the list, it will be approved by the Director of the Financial Assistance Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

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

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

(iv) Locally available technology;

(v) New and emerging conservation technology;

§ 1469.9

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

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

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

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

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

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

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

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

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical

7 CFR Ch. XIV (1-1-05 Edition)

Service Providers in performing its responsibilities for technical assistance.

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

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

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

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

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts.

(a) Applications must include:

(1) A completed self-assessment workbook.

(2) Benchmark condition inventory and conservation stewardship plan in accordance with § 1469.7 for the entire operation or, if Tier I, for the portion being enrolled.

(3) Any other requirements specified in the sign-up notice;

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

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice;

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Producers can only have one active contract at any one time.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other things, the participant agrees to maintain at least

the level of stewardship identified in the benchmark inventory for the portion being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

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

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

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirement: additional practices and activities including the treatment of an additional locally significant resource concern as described in Section III of the NRCS FOTG other than the nationally significant resource concerns, as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) Transition to a higher tier of participation.

(1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participa-

tion would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

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

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

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

(iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract in which a participant transitions from Tier I to a higher tier will not authorize higher payments for that transition until the participant has demonstrated that they have achieved that tier level for a period of at least 12 months.

(4) A contract in which a participant transitions from Tier II to Tier III must include a participation period of no less than 12 months at Tier II.

(5) The transition contract will retain the original contract length.

(e) A conservation stewardship contract must:

(1) Incorporate by reference the conservation stewardship plan;

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

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

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

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

(iii) Refund any CSP payments received with interest and liquidated damages, and forfeit any future payments under CSP, if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract;

§ 1469.22

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

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

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

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

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

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

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

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

(g) Contracts expire on September 30 in the last year of the contract. A participant may apply for a new conservation stewardship contract in a subsequent sign-up.

(h) Participants must:

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

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

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

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

(i) NRCS will determine the payments under the contract as described in § 1469.23.

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

7 CFR Ch. XIV (1-1-05 Edition)

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

(l) An applicant will be awarded only one contract per sign-up period.

§ 1469.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which the participant has received a new practice or enhancement payment its intended purpose for the life span of the conservation practice(s), as identified in the contract or conservation stewardship plan, as determined by NRCS.

(c) Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract whether or not an existing practice payment is made.

(d) NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through the CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract. If an existing practice is part of a system that meets the quality criteria, but does not technically meet NRCS minimum practice standards, the practice must be modified or updated to meet the standard according to the FOTG as specified in § 1469.25(a) of this part.

§ 1469.23 Program payments.

(a) Stewardship component of CSP payments.

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

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

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraphs (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

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

(4) Other incidental parcels as defined in §1469.5(d)(1)(iv) including incidental forest land may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in §1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) Existing practice component of CSP payments.

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

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay participants for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

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

(2) If a participant's CSP contract requires the participant to implement a

§ 1469.23

7 CFR Ch. XIV (1-1-05 Edition)

new structural, vegetative, or management practice, NRCS may pay the participant a percentage of the cost of installing the new practice. In no case will the payment exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) NRCS may not make new practice payments to participants for:

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

(ii) The purchase or maintenance of equipment; or

(iii) A non-land based structure that is not integral to a land based practice, as determined by the Chief.

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

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

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

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

(8) NRCS will not pay a new practice payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(9) The Chief may reduce the rates in any given sign-up notice.

(d) Enhancement component of CSP payments. (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

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

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the participant's Tier of participation as outlined in the sign-up notice and as described in § 1469.5(e) and the contract requirements in § 1469.21; or

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

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

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

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

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

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(5) Eligible enhancement payments.

(i) State Conservationists, with advice from the State Technical Committees,

will develop proposed enhancement payment amounts for each practice and activity.

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

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

(6) The Chief may set a not-to-exceed limit for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

(1) \$20,000 per year for a Tier I conservation stewardship contract, (2) \$35,000 per year for a Tier II conservation stewardship contract, or

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

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

(5) The total of the stewardship, existing and enhancement payment cannot exceed a percentage of the unadjusted stewardship payment rate described in (a)(2)(i) through (iii). The tier-specific percentage is 15 percent for Tier I contracts, 25 percent for Tier II contracts, and 40 percent for Tier III contracts.

(f) The new practice and enhancement components of the CSP contract payment may increase once the participant applies and maintains additional conservation practices and activities as described in the conservation stewardship plan

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in

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

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified:

(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;

(2) As required by the State Conservationist due to changes to the type size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program. In lieu of modifying the contract—

(i) The producer may terminate the contract; and,

(ii) Retain payments received under the contract, if the participant has fully complied with the terms and conditions of the contract before the termination.

(b) Participants may request a modification to their contract to change their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 12 months.

(c) Contract transfers are permitted when there is agreement among all parties to the contract.

(1) NRCS must be notified within 60 days of the transfer of interest or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

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

§ 1469.25

within 60 days after the date of the transfer or change in the interest of the land and the participant has not fully complied with the terms and conditions of the contract to the extent that the purposes of the program have not been achieved.

§ 1469.25 Contract violations and termination.

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

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has: Submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

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

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further pay-

7 CFR Ch. XIV (1-1-05 Edition)

ments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

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

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the producer has fully complied with the terms and conditions of the contract before termination of the contract.

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

Subpart C—General Administration

§ 1469.30 Fair treatment of tenants and sharecroppers.

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

§ 1469.31 Appeals.

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

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

Commodity Credit Corporation, USDA

§ 1469.36

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

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

§ 1469.32 Compliance with regulatory measures.

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

§ 1469.33 Access to agricultural operation.

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

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

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the re-

quirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

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

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

§ 1469.36 Misrepresentation and scheme or device.

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

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

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

(2) Made any fraudulent representation; or

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

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and

after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Subpart A—Apple Market Loss Payment Program

Sec.

- 1470.1 Applicability.
- 1470.2 Administration.
- 1470.3 Definitions.
- 1470.4 Time and method of application.
- 1470.5 Eligibility.
- 1470.6 Proof of production.
- 1470.7 Availability of funds.
- 1470.8 Applicant payment quantity.
- 1470.9 Payment rate and apple operation payment.
- 1470.10 Offsets.
- 1470.11 Appeals.
- 1470.12 Misrepresentation and scheme or device.
- 1470.13 Estates, trusts, and minors.
- 1470.14 Death, incompetency, or disappearance.
- 1470.15 Maintaining records.
- 1470.16 Refunds; joint and several liability.

Subpart B—Apple Market Loss Assistance Payment Program II

- 1470.101 Applicability.
- 1470.102 Administration.
- 1470.103 Definitions.
- 1470.104 Time and method of application.
- 1470.105 Eligibility.
- 1470.106 Proof of production.
- 1470.107 Availability of funds.
- 1470.108 Applicant payment quantity.
- 1470.109 Payment rate and apple operation payment.
- 1470.110 Offsets and withholdings.
- 1470.111 Assignments.
- 1470.112 Appeals.
- 1470.113 Misrepresentation and scheme or device.
- 1470.114 Estates, trusts, and minors.
- 1470.115 Death, incompetency, or disappearance.
- 1470.116 Maintenance and inspection of records.
- 1470.117 Refunds; joint and several liability.

Subpart C—Apple Market Loss Payment Program III

- 1470.201 Applicability.
- 1470.202 Administration.
- 1470.203 Definitions.
- 1470.204 Time and method of application.
- 1470.205 Eligibility.
- 1470.206 Proof of production.
- 1470.207 Availability of funds.

- 1470.208 Applicant payment quantity.
- 1470.209 Payment rate and apple operation payment.
- 1470.210 Offsets and withholdings.
- 1470.211 Assignments.
- 1470.212 Appeals.
- 1470.213 Misrepresentation and scheme or device.
- 1470.214 Estates, trusts, and minors.
- 1470.215 Death, incompetency, or disappearance.
- 1470.216 Maintenance and inspection of records.
- 1470.217 Refunds; joint and several liability.
- 1470.218 Violations of highly erodible land and wetland conservation provisions.

AUTHORITY: Sec. 811, Pub. L. 106-387, 114 Stat. 1549; Sec. 741, Pub. L. 107-76, 115 Stat. 704; Sec. 102, Pub. L. 107-117, 115 Stat. 2230; Sec. 10105, Pub. L. 107-171, 116 Stat. 489.

SOURCE: 66 FR 13843, Mar. 8, 2001, unless otherwise noted.

Subpart A—Apple Market Loss Payment Program

§ 1470.1 Applicability.

(a) The regulations in this subpart are applicable to producers of 1998 and 1999 crop of apple production. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program in accordance with section 811 of Public Law 106-387. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.2 Administration

(a) The Apple Market Loss Payment Program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by State and county Farm Service Agency committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.