

## § 1470.2

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### § 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 will occur in the first quarter of each fiscal year, to the extent practicable; and

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

(d) During the period beginning on October 1, 2008, and ending on September 30, 2017, NRCS will, to the maximum extent practicable:

(1) Enroll in CSP an additional 12,769,000 acres for each fiscal year; and

(2) 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) 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 matters, including:

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

(ii) Identification of not less than three, nor more than five priority re-

source concerns in particular watersheds, geographic areas, or other appropriate regions within a State;

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

(iv) Development of design protocols and participation procedures for participation in on-farm research, and demonstration and pilot projects; and

(v) Evaluation of Cooperative Conservation Partnership Initiative (CCPI) projects and allowable program adjustments for the conduct of projects.

(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.

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

### § 1470.3 Definitions.

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

*Agricultural 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. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

*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; 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.

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*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 (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years (this requirement applies to all members of a legal entity); 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, 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 "con-

servation 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.

*Conservation planning* means using the planning process outlined in the applicable National Planning Procedures Handbook (NPPH).

*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 conservation programs for which standards and specifications have been developed. Conservation practices are in the NRCS Field Office Technical Guide, section IV, which is based on the National Handbook of Conservation Practices.

*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.

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

*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 enhancements 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 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.

*Field office technical guide* 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, 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 (BIA) jurisdiction.

*Indian Tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or

established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Joint operation* means, as defined in 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.

*Limited Resource Farmer or Rancher* means:

(1) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years (\$142,000 is the amount for 2010, adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

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

*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 Department of Agriculture (USDA) Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation

that wants to market an agricultural product as organically produced.

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

*Nonindustrial private forest land* means rural land 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 decisionmaking 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 the application is obligated into a contract, 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, joint operation, or Indian tribe who has an interest in the agricultural operation, as defined in 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;

- (2) A legume grown for use as forage, seed for planting, or green manure;

- (3) A legume-grass mixture;

- (4) A small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

*Resource-conserving crop rotation* means a crop rotation that:

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

- (2) Reduces erosion;

- (3) Improves soil fertility and tilth;

- (4) Interrupts pest cycles; and

- (5) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

*Secretary* means the Secretary of USDA.

*Socially disadvantaged farmer or rancher* means a producer who 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. 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, Caribbean Area, or 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 the CMT, 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

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resources on land active in agricultural, forestry, or related uses. The term includes the following:

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

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

*Technical Service Provider* 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:

(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 based on natural resource factors that consider national, regional, and State-level priority ecosystem areas,

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

(c) Of the acres made available for each of fiscal years 2009 through 2012 to carry out CSP, NRCS will use, as a minimum:

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

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

(d) In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the reallocation process, NRCS will consider several factors, including demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

(e) Of the CSP funds and acres made available for each fiscal year:

(1) The Chief will reserve 6 percent of funds and acres to ensure an adequate source of funds and acres for the CCPI. Of the funds and acres reserved, the Chief will allocate:

(i) Ninety percent to projects based on the direction of State Conservationists, with the advice of State Technical Committees; and

(ii) Ten percent to projects based on a national competitive process established by the Chief. In determining funding allocation decisions for these projects, NRCS will consider the extent to which they address national and regional conservation priorities.

(2) Any funds and acres reserved for the CCPI in a fiscal year that are not obligated by April 1 of that fiscal year may be used to carry out other CSP activities during the remainder of that fiscal year.

#### § 1470.5 Outreach activities.

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

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

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