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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1469

RIN 0578-AA36

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document establishes an Amendment to the interim final rule governing activities under the Conservation Security Program (CSP) which is administered by the Natural Resources Conservation Service (NRCS). The CSP sets forth a mechanism to provide financial and technical assistance to agricultural producers who, in accordance with certain requirements, conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. The CSP regulations implement provisions of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

DATES: Effective date immediately upon publication. Comments must be received by [insert date 120 days after publication date in the FEDERAL REGISTER].

ADDRESSES: Send comments by mail to Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to FarmBillRules@usda.gov;

Attn: Conservation Security Program. You may access this interim final rule via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov>. Select “Farm Bill. The rule may also be reviewed and comments submitted via the Federal Government’s centralized rulemaking Web site at <http://www.regulations.gov>.”

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-1845; fax: (202) 720-4265.

SUPPLEMENTARY INFORMATION: This document establishes an amendment to the interim final rule governing activities under the Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS, using the authorities and funds of the Commodity Credit Corporation (CCC). CSP provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation. The amendment may be reviewed via the Federal Government's centralized rulemaking Web site at <http://www.regulations.gov>.

The CSP regulations implement provisions set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, 16 U.S.C. 3801 et seq., as amended by the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

The CSP helps support those farmers and ranchers who reach the pinnacle of good land stewardship, and encourage others to conserve natural resources on their farms and ranches.

During 2004, NRCS held a CSP sign-up in 18 watersheds covering 22 states. This phased-in approach to CSP implementation brought forth several issues and concerns that encompass the broad range of agricultural production at all scales including mainstream commodity production and small-scale niche producers. Additional questions are incorporated below with a request for public comment in order to more fully harness the program potential for environmental performance and streamline the underlying delivery system. NRCS intends to finalize the CSP rule once additional programmatic experience is gathered with a full-scale sign-up in 2005.

The CSP amendment is based on an interim final rule that was published in the Federal Register on June 21, 2004 (69 FR 34501). The comment period for that rulemaking proceeding ended October 5, 2004 (69 FR 56159). NRCS received more than 13,400 submissions that raised numerous issues. NRCS received over 13,300 submissions from farmers, ranchers, and other individuals, 8 from businesses, 41 from non-governmental organizations (including, but not limited to, conservation and agricultural industry organizations), one from an unidentified organization, two from academic institutions, and ten from State, local, and Tribal governments. Ninety-seven percent of the submissions were form letters, and most of the issues raised during the comment period were already raised and addressed in the interim final rule. This document affirms these earlier responses and discusses only the new issues that were not already discussed in the interim final rule. Accordingly, based on the rationale set forth in the interim final rule and this document, the provisions of the interim final rule are adopted as an amendment with changes discussed below. NRCS intends to finalize the CSP rule once additional programmatic experience is gathered with a full-scale sign-up in 2005.

Responses to Comments.

We first address general comments and then present our response to comments and explanation of changes associated with specific sections of the interim final rule. In addition to the changes discussed below, NRCS also made non-substantive changes for purposes of clarification.

Commenters asserted that NRCS should adopt the highly successful model of producer-initiated grants under USDA's Sustainable Agriculture Research and Education (SARE) program in establishing protocols and payment rates for on-farm research and demonstration. Although NRCS made no changes based on these comments, NRCS is reviewing the SARE program and other programs to determine whether to expand the eligible list of enhancements that could be allowed under the statutory provisions.

Commenters asserted that NRCS should not allow participation in the CSP by farmers who spray any toxics based on the argument that such farmers would have already despoiled the land. NRCS made no changes based on these comments. To be eligible for CSP payments, producers must meet minimum soil and water requirements which could not be met unless producers followed appropriate practices regarding the use of fertilizers, manure, and pesticides.

Commenters asserted that NRCS should reconsider whether the Conservation Security Program is the proper program to provide incentives for types of renewable energy production that already qualify for Federal incentives, such as tax credits and grant funding. NRCS made no changes based on these comments. The statutory provisions at 16 U.S.C. 3838a specifically provide for the CSP to assist producers of agricultural operations in promoting, among other things, the “conservation and improvement of the quality of ...’energy’ and identifies energy conservation measures as eligible conservation practices.” This rule is constructed to include

energy management and energy creation when it ultimately leads to conservation or improvement.

Commenters asserted that the regulations should include provisions reflecting the statutory provisions for renewal of contracts. NRCS made no changes based on these comments. This is covered adequately by the statute.

Section by Section Discussion

§ 1469.2 Administration.

Commenters asserted that to prevent administrative overreaching, NRCS should delete the provisions in § 1469.2(b) that grant the NRCS Chief authority to modify or waive provisions of the CSP. NRCS made no changes based on these comments. The provisions of § 1469.2(b) contain appropriate safeguards by allowing a waiver only if the Chief determines (for a particular limited situation) that the provisions to be waived would be inappropriate and inconsistent with the goals of the program.

§ 1469.3 Definitions.

There were several changes and comments to the definition of agricultural land eligible to be enrolled in the CSP. The statutory provisions at 16 U.S.C. 3838a includes as eligible land for CSP “private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland).” Commenters asserted that NRCS should remove silvopasture as pastureland eligible for CSP in order to better encourage environmentally sound management of invasive species and to protect wildlife and habitat. NRCS made no changes based on these comments. Silvopasture is improved pasture land and, therefore, is eligible for CSP.

NRCS experience during the 2004 sign-up was that certain agricultural products, such as sugar maple and ginseng, might be excluded from the program by the exclusion of forestland as

defined in the rule. Such products are cultivated more like orchards, typically consisting of a monoculture requiring more intensive agricultural inputs than a forestland. NRCS proposes to adjust the definition of agricultural land to include land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products to allow inclusion of these products. NRCS is proposing a conforming change to the definition of forest land.

Less intensively managed forest systems used for foraging activities are not currently included in CSP. The commercial harvest of products, such as landscaping plants, fungi, floral greens, and wild edible plants, is on the rise. Most forestland managed for these products will qualify for CSP since very rarely are nutrients of any kind applied, the areas are not grazed so protection of streams is not an issue, pest issues are generally sporadic in nature so few if any pesticides are used, harvesting of most non-wood products is accomplished by hand so equipment use is limited to existing roads, and for the most part irrigation is not used. However, the tools commonly used for assessing cropland, such as RUSLE2, are not suited for these forested conditions and there is no consistent system for collecting data to determine sustainability or quality criteria. NRCS expects that tools assessing the applicable quality criteria for the various resource concerns would need to be developed or existing tools would need to be modified to allow the agency to determine the appropriate tier and enrollment categories in which to place such operations. NRCS is seeking comment and information about the best way to accommodate and consider forested land products in CSP. Specifically, if included in future program implementation, on which landuse should the stewardship payments be based and what analytical tools should measure performance?

Commenters asserted that NRCS should modify the definition of "agricultural operation" to encourage efficient NRCS spending, to facilitate eligibility determinations for the agency and the producer, and to guard against program fraud and abuse. NRCS made no changes as a result of these comments. The delineation of an agriculture operation is not a condition of eligibility. It determines contract boundaries and tier placement. Also, the definition is not the place to promote efficient spending. Program efficiency is an outcome of the eligibility, minimum requirements, and tier criteria. Fraud and abuse is handled as a separate section within the rule and has no relevance to this definition.

The interim final rule at § 1469.6(b)(3)(ii) gives some preferences to limited resource producers by allowing limited resource producer participation to be a factor considered in developing the enrollment subcategories. Commenters asserted that NRCS should change the definition of "limited resource producer" to increase the gross farm sales and poverty level tests and thereby include a larger number of producers to be within the category. Commenters also asserted that NRCS should change the definition of "beginning farmer" and "beginning rancher" in the interim final rule to help target the cost-share bonuses to individuals without large net incomes. NRCS made no changes based on these comments. NRCS notes that the definition of limited resource producers includes a yearly adjustment for inflation using the Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service. Also, these are definitions used in other USDA programs. Moreover, NRCS believes that placing additional emphasis on monetary factors would be inconsistent with the statutory criteria which, except for the cost share rate discussed above, does not place emphasis for monetary payments based on income.

The statutory provisions at 16 U.S.C. 3838a also state that “forested land that is an incidental part of an agricultural operation shall be eligible for enrollment in the conservation security program.” The definition of “incidental forest land” at § 1469.3 stated that “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.” Commenters asserted that NRCS should remove the maximum parcel size requirement for eligible incidental forestland and increase the allowable total to 20 percent of the enrolled acreage. NRCS made no changes based on these comments. CSP is an agricultural working lands program for specifically named land uses, which does not include forestry. NRCS believes that such suggested changes are simply beyond the concept of “incidental.”

NRCS experience in the 2004 sign-up revealed a potential need to limit the total amount of incidental land eligible for payment in a contract. For simplicity, incidental land was included with the adjacent land for purposes of calculating the stewardship and existing practice payments. NRCS proposes to limit the amount to ten percent of the total contract acreage for payment purposes.

The statutory provisions at 16 U.S.C. 3838a specify that land eligible for CSP includes rangeland. The regulations at § 1469.3 define rangeland to include “areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted.” Commenters asserted that the specific reference to acreage planted in crested wheatgrass should be deleted from the definition of rangeland. NRCS made a change based on these comments by removing the specific reference. NRCS did add additional examples of the types of land included in rangeland to be consistent with Society for Range Management definitions.

Under the regulations, “resource-conserving crop rotation” may be considered for enhancement payments. The provisions of 16 U.S.C. 3838(10) define “resource-conserving crop rotation” as “a crop rotation that – (A) includes at least 1 resource-conserving crop (as defined by the Secretary); (B) reduces erosion; (C) improves soil fertility and tilth; (D) interrupts pest cycles; and (E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).” Commenters asserted that NRCS should confine the regulatory definition of a “resource-conserving crop rotation” to the statutory wording, and make the necessary and appropriate revisions to the conservation practice standard for conservation crop rotation. Commenters also asserted that NRCS should add the following to the end of the definition of “resource-conserving crops”: “a winter annual oilseed crop which provides soil protection; and such other plantings, including non-traditional crops with substantially reduced water use needs, as the Secretary considers appropriate for a particular area.” NRCS made no changes based on these comments. The regulations more closely relate the “resource-conserving crop rotation” to enhancement payments and provide examples of resource conserving crops. There are situations where one or more of the listed practices would provide additional environmental performance above the quality criteria for a specific resource concern. In these cases, the performance of the practice above the minimum criteria would qualify as an enhancement payment, such as the soil quality enhancement.

§ 1469.5 Eligibility requirements.

The provisions of §1469.5 set forth eligibility requirements for CSP, including provisions regarding minimum level of treatment for water quality on cropland. These provisions state that the minimum treatment for water quality on cropland for Tier I and Tier II 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.

NRCS determines applicants' eligibility for Tier I and Tier II by verifying that a producer has implemented specific conservation practices and activities that at least meet the agency's technical guides for soil and water quality standards. NRCS is considering options for augmenting and enhancing its ability to evaluate applications in order to better identify producers who are effectively managing their agricultural operations from an environmental stewardship perspective. By evaluating not only which conservation practices have been implemented, but also how well the practices and activities are performing, CSP will be able to more cost effectively measure and encourage beneficial conservation outcomes.

NRCS is seeking comment on the amended eligibility provision that encompasses the agency's enhanced methodology for determining water quality performance. The amended provision states that the minimum level of treatment for water quality on cropland for Tier I and Tier II is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria. NRCS may determine that the quality criteria have been addressed both by implementing specific conservation practices or activities and by reducing the risks associated with agricultural practices to below acceptable thresholds.

NRCS is developing risk assessment indices that measure how conservation activities reduce risks to human health and environmental quality. These new performance-based indices measure water quality risk reduction for several resource concerns, including salinity, sediment, pesticides, and nutrients. The indices use models, such as WIN-PST (a quantitative tool that

examines the risks caused by certain pesticides). With WIN-PST, NRCS can develop bundles of conservation practices and management techniques that address the risks presented by pesticides. Other examples include the Phosphorous Indexes and Nitrate Leaching Indexes that allow NRCS to identify water quality risks caused by nutrients and to develop mitigation practices to reduce those risks. Other models such as APEX determine sediment delivery to surface waters and provide information about how to mitigate these risks. The Irrigation Water Management Index allows for the determination of irrigation water management practices to address the risks of salinity for water quality.

Performance indices used in CSP serve many functions including establishing basic program eligibility by determining if quality criteria have been met. In addition, they are used in calculating levels of performance above the minimum, and providing a gradational scale of performance which allows for direct environmental payment calculations. The Soil Conditioning Index is an example of a simple tool that performs all of these functions. NRCS is committed to further developing performance-based tools, models and associated indices that depict and measure environmental outcomes. It is also the agency's intent to use outcome-based tools for all its programs in the future to determine the effectiveness and impact of conservation planning and implementation in treating natural resource concerns. NRCS is also seeking comment on the potential for other performance-based indices for determining eligibility and assessing performance. In particular, NRCS is interested in public comment on indices for measuring pasture and rangeland management, as well as wildlife habitat management.

Also, with respect to the minimum level of treatment for soil quality and water quality on cropland, NRCS has added provisions stating that “The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or

testing is needed to review performance data.” Technology tools and standards are typically developed for the majority of the climatic situations, but there may be areas that have unique resource concerns where the minimum of treatment must be adjusted to provide the same level of environmental performance.

NRCS is seeking comment on the rigor of the minimum level of treatment for grazing lands for Tier I and Tier II. NRCS has modified the interim final rule to require pastureland and rangelands to have vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance; proper livestock distribution; timing of use and managing livestock access to water courses.

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. The knowledge of how much forage is available, when it is available, its nutritive value, and location in the agricultural operation outlines the design of the livestock distribution and timing of use portions of the grazing plan. The determination of available forage includes leaving an appropriate level of the plant for proper regeneration and reproduction. The consumption estimates includes an amount for wildlife species which consume herbaceous plants available in the grazing unit. If there is a negative balance (not enough forage) during certain times of the year, then the producer provides supplemental feed. If there is a positive balance (too much forage), the producer might take on extra animals during that period. In highly intensive grazing rotations, the animal movement and supplemental feeding may occur more than once a day, such as after milking. In low intensity systems, such as high mountain desert areas, the animal

movement will be much less often and animals are typically managed by water, shade, and salt placement or herding.

Proper timing of use prevents locating animals in overly wet pastures or high mountain zones to protect the soil from compaction and potential gully initiation. Managing the plant community addresses soil quality concerns and most of the water quality criteria for sediment and salinity and nutrient or pesticide concerns relating to runoff. Managing access to water courses addresses other water quality concerns. Depending on the topographic situation and climate, the grazing land might necessitate management options from fencing of entire stream reaches and the use of “flash” grazing to only fencing fragile areas in the desert and assuring that during the stream flow peaks animals are managed to be away from those areas by salt and shade placement. NRCS is seeking comment regarding the sufficiency of this minimum level of treatment for those conservation stewards to meet soil quality and water quality minimums as described in the rule.

NRCS has made several modifications to the eligibility requirements for Tier III to further clarify the agency’s expectations for the highest tier of participation. NRCS is clarifying that producers seeking to be placed in Tier III must use a resource management system that addresses the entire agricultural operation. NRCS believes that a comprehensive and operational resource management system is essential for meeting and documenting the eligibility requirement that all the applicable resource concerns are addressed in accordance with the NRCS quality criteria.

NRCS has added an explicit reference to the field-based tool that NRCS will utilize to determine if an agricultural operation is addressing the wildlife resource concern. NRCS intends to rely on either a general or species specific habitat assessment guide as the basis for

determining whether an index value of at least 0.5 is achieved. The intent of the general habitat assessment guide is to provide an alternative for landscapes where there is no species of conservation concern. The general guide evaluates the suitability of the types, amounts, and distribution of habitat elements that support diverse populations of wildlife species. The species specific habitat assessment guide was also included so that watersheds can assess conservation efforts on behalf of a single species in need of special assistance. The species guide evaluates the quality and quantity of elements such as shelter, food and water that are needed to satisfy the life requirements of a particular species of conservation concern. NRCS has determined that either assessment technique is valid and appropriate to document the impact of conservation activities on working lands.

NRCS has added a specific eligibility requirement for Tier III contracts that all riparian corridors within the agricultural lands or incidental parcels offered for CSP contracts are buffered to restore, protect, and enhance riparian resources. Riparian corridors are essential elements of working landscapes. Practices and activities on agricultural lands can have a profound positive impact on riparian corridors, especially when they are positioned to intercept sediment, nutrients, pesticides, and other materials in surface runoff, reduce nutrients and other pollutants in shallow subsurface water flow, retard stream-bank mass movement, and provide litter or other habitat components to address fish and wildlife needs. NRCS is adding this specific eligibility requirement to highlight the importance of riparian zone practices and activities in contributing to stream and river health and providing other benefits such as wildlife habitat.

There are a number of conservation practices and activities that can be utilized to comprehensively protect riparian areas and enhance their function as habitat for aquatic species.

For example, vegetative filter strips help improve water quality benefits and surface runoff control. Forest buffers and herbaceous cover promote wildlife habitat benefits. Streambank stabilization structures and bio-engineering actions, such as, willow-plugs help stabilize shorelines and reduce streambank erosion. Other practices, such as fencing, livestock walkways, and livestock watering facilities, also work in concert to protect riparian areas from degradation.

Riparian corridor resource concerns will be included and documented as part of the benchmark condition inventory for Tier III contracts and will be included as part of any resource management system developed for CSP contracts transitioning to Tier III. Riparian areas that are enrolled in the Conservation Reserve Program and the Wetlands Reserve Program are not eligible for CSP payments but may be used to demonstrate eligibility for Tier III contracts.

NRCS is proposing to use the NRCS Stream Visual Assessment Protocol (SVAP) to determine if riparian corridors have been adequately treated in future rulemaking. SVAP is a field technique used to evaluate the ecological condition of a stream and its riparian corridor. It contains standard evaluation elements (e.g., channel condition, hydrologic alteration, riparian zone, bank stability) that combine to yield an overall quality rating for a stream reach or other aquatic habitat. NRCS is considering requiring in the final rule that riparian corridors within agricultural operations offered for the program will meet the minimum eligibility criteria for Tier III if the SVAP indicates that 50% of the habitat potential is provided. NRCS is seeking comment on the rigor of the minimum level of treatment for riparian corridors for Tier III if such a measure is used. NRCS will evaluate the use of SVAP during the 2005 sign-up to determine if it would be feasible to use it to determine minimum eligibility for Tier III.

The CSP rewards stewards who improve and protect riparian areas through a wide variety of enhancement options. Producers demonstrating the top levels of total resource conservation,

including protecting and enhancing riparian areas, will qualify for the highest level of CSP participation.

Environmental performance and actual field based outcomes have proven difficult for agencies to establish and report. Typically agencies report progress toward achieving environmental goals as outputs such as acres managed (for example resource management systems planned or applied on grazing lands), acres created (such as wetlands), or permits issued (for regulatory agencies). NRCS broke through the performance outcome barrier with its use of the soil conditioning index (SCI) during the 2004 CSP sign-up. The SCI estimates the amount of net carbon stored in the soil and the reduction in sediment leaving the land on an annual basis. The enhancement payment is based on the value of the outcomes rather than calculated on the paradigm for cost-share programs - the cost of implementing an activity. Additionally NRCS is in the process of developing performance-based indices similar to the Soil Conditioning Index for the major resource concerns along with a payment structure that corresponds with the environmental benefit produced. NRCS seeks comment of this approach to enhancement payments as a basis for rewarding environmental performance.

§ 1469.20 Application for contracts.

During the 2004 sign-up, NRCS recognized that despite the “one contract at any one time” provision of the regulation, this limit was only applied to the producer who actively managed the agricultural operation, and not to any other participant in the CSP contract. NRCS seeks to clarify that the one contract limit applies to all signatories to the CSP contract and is seeking comments on this interpretation which will be utilized in the FY 2005 sign-up. Conforming changes were made to the definition of “participant” and elsewhere in the rule to

recognize that the CSP contract may be signed by multiple parties whom may not all be producers.

§ 1469.21 Contract requirements.

Commenters asserted that clarification was needed regarding the contract length when a contract transitions from Tier I to a higher tier. The provisions of the interim final rule did not allow contracts to extend beyond the original five-year contract length once the transition to a higher tier occurred. NRCS agrees with the comments and has added § 1469.21(d)(4) to allow for a contract adjustment once the transition occurs. NRCS will assure that the conservation criteria are met prior to the transition by conducting a field visit and review of those contracts.

Commenters asserted that clarification was needed regarding the watershed rotational cycle. They were concerned that the watershed might come again into sign-up before the Tier II and Tier III 10-year contracts were completed. The interim final rule states in § 1469.5(b) that “Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.” and in § 1469.20(d) that “Producers can only have one active contract at any one time.” NRCS made no changes based on these comments.

Commenters requested that NRCS give the watersheds selected to participate in the FY 2004 pilot sign-up another chance to participate in the Conservation Security Program in the next year or two based on the argument that there was too little time allowed for the sign-ups to occur, contracts to be signed, and payments to be made before the end of the fiscal year. Additionally, sign-up occurred during harvest period which further decreased participation. In the May 4, 2004, notice on watershed process and in the preamble to the June 21, 2004, interim final rule NRCS discusses the benefits of a watershed rotation and further states, “The watershed approach includes a rotation system aspect in that all watersheds will be selected once before any are

selected for a second time." (69 FR 34505, June 21, 2004). Additionally 69 FR 24560, May 4, 2004, states, "NRCS expects that the selection of different watersheds for each sign-up will result in every farmer and rancher being potentially eligible for CSP over the next 8 years. No qualifying producer will be left out."

However, due to the concerns expressed to NRCS, the agency has determined that the 18 watersheds will be reopened only for new applicants during the 2005 sign-up. The agency is still committed to the established watershed rotation process and will continue to utilize it in subsequent years. However, NRCS recognizes that there were unique circumstances in the program's first year and it seeks to fairly treat the farmers and ranchers in those first watersheds.

The provisions of the interim final rule at § 1469.21(c)(2) provided that to be eligible for Tier II, a participant must include "the treatment of an additional locally significant resource concern" by the end of their contract period. This was originally included to assure that Tier II participants achieved additional resource benefits beyond the minimum level of soil and water quality. NRCS's experience with the 2004 sign-up revealed that this requirement may be difficult to implement in cases where the producer has either already addressed the relevant locally significant resource concerns or no locally significant resource concerns existed on the operation. In some cases, NRCS and the producers had to identify a resource concern that added little environmental benefit compared to its cost to fulfill this contract requirement.

To ensure that CSP Tier II participants focus on significant resource concerns that provide substantial offsite environmental benefits and to streamline application review and acceptance, NRCS will determine, for each participating watershed, a pressing locally significant resource concern. Tier II applicants will only be required to address this concern if it is applicable to their operation and not already fully addressed to NRCS's quality criteria.

Otherwise this requirement will be considered satisfied. Participants may receive cost-share payments for new practices required to address this resource concern, if offered as part of the sign-up, to assist them in fulfilling this contract requirement.

The provisions of the interim final rule at § 1469.21(d)(3), 1469.23(c)(5), and 1469.24(b) required that a participant achieve a higher Tier for at least 12 months before becoming eligible for corresponding payments based on the higher Tier. Commenters asserted that the regulations should not impose such a barrier based on the argument that participants have earned the higher payments when they meet the requirements for a higher Tier and that removal of the barrier would encourage participants to obtain a higher Tier as soon as possible. In response, NRCS has deleted the 12-month requirement based on the arguments submitted by the commenters, but have added the provision that a field verification will be conducted by NRCS prior to transition to assure program compliance with the new tier requirement.

§ 1469.23 Program payments.

The provisions of 16 U.S.C. 3838c(b)(3) state that payment to a producer shall not be provided for “construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations.” Pursuant to this authority, the regulations at § 1469.23(c)(3)(i) state that NRCS may not make new practice payments for such facilities or devices. Commenters asserted that the prohibitions should apply to all payment components and not just to the new practice component. NRCS agrees with the comments and has made adjustments in § 1469.23(c)(3) and added a new subsection, § 1469.23(i).

Commenters asserted that the regulations should include feedlots in the stewardship payment computation. NRCS made no changes based on these comments. Feedlots are not a land type eligible for CSP.

To be eligible for payments under CSP, the provisions of 16 U.S.C. 3838a(b) require a producer to develop and submit to NRCS a conservation security plan. Commenters asserted these provisions should be utilized. NRCS made no changes based on these comments. The statutory term “conservation security plan” is more descriptively described in the regulations as the “conservation stewardship plan.” To be eligible for payments under CSP, the provisions of § 1469.7 require a participant to develop and submit to NRCS a conservation stewardship plan.

Commenters also asserted that NRCS had abandoned the statutory provision giving beginning farmers a higher cost-share rate. NRCS considered these comments and has adjusted the section to continue the 50 percent cost-share for new practice payments, except the cost-share limit is raised to 65 percent for limited resource and beginning producers.

The statutory provisions at 16 U.S.C. 3838c(b)(2) constrain spending through a contract cap of \$20,000 for Tier I, \$35,000 for Tier II, and \$45,000 for Tier III. The interim final rule also provided the following regulatory cap: “The total of the stewardship component, the existing practice component, and the enhancement component may not exceed 0.15 of the stewardship payment amount without any reductions for Tier I, may not exceed 0.25 of the stewardship payment amount without any reductions for Tier II, and may not exceed 0.4 of the stewardship payment amount without any reductions for Tier III.” Many of the commenters asserted that the payment formula should allow for payments without any reductions or caps and that the reduction is unfair to small acreage farms and dairies. NRCS agrees that the regulatory cap should be deleted because it disadvantaged small farms in areas with low rental rates.

Specifically, NRCS was concerned that tying the enhancement payment to the stewardship payment penalized small operations with significant opportunities for enhancement activities. Accordingly, NRCS deleted the specific section containing the regulatory cap, but retained the authority of the Chief to limit payments for any component in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

In the FY 2004 sign-up notice, NRCS used this authority to specify that the total annual enhancement payments per contract may not exceed \$10,000 for tier I, \$17,500 for tier II and \$22,500 for tier III, regardless of operation size. NRCS is seeking comment about the effectiveness of capping total enhancement payments. NRCS intends to cap enhancement payments in the 2005 sign-up at higher levels of \$13,750 for Tier I, \$21,875 for Tier II, and \$28,125 for Tier III.

NRCS is seeking to encourage participants to further improve their environmental performance through CSP. CSP allows contract payment for existing enhancements based on the benchmark inventory and application. NRCS will be requiring applicants in the 2005 sign-up to agree to a variable payment rate for enhancement activities that are part of the initial contract. The annual enhancement payment will be calculated at a variable payment rate with the rate initiating at 150% for the first contract year and then at a declining rate for the remainder of the contract. This will provide contract capacity to add additional enhancements in the out-years and will encourage participants to make continuous improvements to their operation. Additionally this mechanism will allow for a more consistent number of contracts accepted for each sign-up year according to the current budget projections. In order to maintain the same level of payment over the life of the contract, the participant may add additional enhancement activities of their

choice. The variable rate would be established in the sign-up announcement. NRCS is seeking comment on this action. NRCS believes that with the changes made by this document, each of the reductions and caps will help create the appropriate balance between allowing the largest number of participants in each of the categories yet providing meaningful payments (see also the discussion regarding payment formulas in the interim final rule at 69 FR 34503).

NRCS is considering including enhancement payment limits in the final rule. NRCS is seeking comments on whether the enhancement payment limits imposed in 2004 or 2005 are appropriate and whether they should be included in the final rule to provide more consistency and regulatory certainty across different sign-ups. NRCS is also seeking comments about the establishment of individual payment sub-caps for groups of enhancement activities addressing specific resource concerns (such as air quality, energy, etc.) to encourage participants to adopt a variety of enhancement activities that would target the full suite of resource concerns on their agricultural operations.

Commenters asserted that enhancement payments should be adjusted to include maintenance costs. NRCS made no changes based on these comments. Enhancement components already are calculated to include compensation for maintenance (operation and management) in § 1469.23(d)(5)(ii). NRCS is seeking comments on the process used to determine the appropriate level of enhancement payments for practices and activities. NRCS seeks to base its enhancement payments on an objective measure of either adoption cost or environmental benefit. In some cases, especially with respect to changes in management, environmental benefits may be realized but the cost to the producer is difficult to determine. Similarly, it is not always possible to quantify and monetize the benefits generated by enhancement activities. In the cases that both are determinable, NRCS prefers to compensate

producers based on the economic value of environmental benefits to recognize the environmental performance achieved by adopting a practice or activity. NRCS recognizes that the cost lists used to calculate enhancement payments are still being developed for participating watersheds and is seeking suggestions about the most effective and equitable method to determine the cost or benefits of enhancement activities.

Commenters asserted that payments should be made retroactive to the application date. NRCS made no changes based on these comments. The CSP payments are made within the same fiscal year as the application is made and includes payment for the entire year as the first contract year.

§1469.24 Contract modifications and transfers of land.

Under the provisions of § 1469.24, conservation stewardship contracts may be modified, including modifications to add or subtract land to the contract. Commenters asserted that NRCS should not allow land to be added or subtracted once a contract is signed. They asserted that this is necessary to guard against program fraud and abuse. NRCS made no changes based on these comments. The government will be a party to modifications and has expertise to help avoid fraud and abuse. The addition and subtraction of land follows the typical flow of agricultural operations in American production agriculture.

§ 1469.30 Fair treatment of tenants and sharecroppers.

Commenters asserted that NRCS should establish a limit for the landlord's share of any payments for land operated by a tenant. NRCS made no changes based on these comments. NRCS believes that this a contract issue that should be resolved between the landlord and the tenant.

§ 1469.31 Appeals.

The regulations at § 1469.31 sets forth provisions regarding appeals. These provisions do not allow appeal of payment rates. Commenters asserted that appeals should be allowed regarding payment rates. NRCS made no changes based on these comments. As indicated in § 1469.31, participants are not allowed to appeal matters of general applicability. Such appeals would affect all participants and would be administratively unworkable.

Executive Order 12866

The Conservation Security Program (CSP) is a voluntary Natural Resources Conservation Service (NRCS) program that recognizes the stewardship of natural resources by farmers and ranchers on working lands. The CSP takes an innovative approach in that it rewards the best stewards of the land. Over the next 8 years, CSP will be offered to all eligible farmers and ranchers in the United States.

Discussion of the Economic Analysis Benefit Cost Model

The economic analysis is based on a model that was designed to simulate producers' willingness to participate in CSP. The model includes a number of simplifying assumptions, some of which are discussed below. Because of the assumptions used, the model should not be relied on to predict actual participation rates, tier and regional distribution, or the magnitude of payments. The model is best used to predict the direction of how participation would change if a particular program feature is changed, rather than the magnitude of the change. Because program implementation has only begun, the model has not been validated so its ability to predict program participation has not been assessed.

The model provides results reflecting total participation over the next 15 years, rather than information on any particular year's sign-up. Annualized values are also presented for informational purposes, but they represent an average over the time period covered by the model,

rather than any particular year. A budget constraint has not been incorporated into the model and the results do not reflect the use of enrollment categories intended to comply with any such budget constraint.

Farms -- The model used ARMS 2002 Phase 3 data to construct 6,105 farm types representing the 2.1 million farms in the U.S. Such farms are likely more numerous than the agricultural operations that may enroll in CSP because several “farms” may be operated by a single applicant. Additionally, the model assumes that farms as small as five acres will enroll in CSP. In reality, the cost of fulfilling the eligibility requirements and applying to the program may exceed the benefits for such small farms.

Information about each representative farm includes acreage needing treatment (from the NRCS work load assessment database), acreage already treated (from the NRCS Performance and Results Measurement System), cost of installing practices, and county rental rates. Such information represents the average for the farm type and watershed in which each farm is located, and so may differ from the characteristics of actual farms enrolled in CSP. Additionally, some the data are only available on a statewide basis, so allocations to the watershed are based on the acreage covered by each land type. To the extent that agricultural operations in a watershed may have adopted conservation practices to a higher or lower degree than average, such estimates may not be accurate.

Eligibility -- The model includes several assumptions about the treatment of natural resource concerns for CSP eligibility. Due to lack of data, the model considered up to six resource concerns that need to be addressed and assumed that 1.5 selected practices per acre are needed to fully treat each resource concern. If different practices or combination of practices are

needed to treat resource concerns in actual agricultural operations, producers may be less or more likely to sign up for CSP or they may enroll in a different tier than predicted by the model.

The model constructed a set of uniform decision rules to predict whether a producer would apply to CSP. These decision rules include:

- A return of at least seven percent on conservation costs to the producer during the contract,
- Minimum size farm of five acres,
- The cost of complying with eligibility requirements prior to enrollment cannot exceed 10 percent of annual rental rate of the land,
- A willingness to participate factor based on socioeconomic data from participants in other conservation programs,
- Tier selection that maximizes net return, and
- Producers are assumed to recognize only 25 percent of the onsite benefits derived from conservation practices.

To the extent producers use a different set of decision rules or consider additional factors in their decision to apply to CSP, the model results may differ from actual participation. Note for example that the decision rules do not include the cost of adopting practices to become eligible for any enrollment categories since the categories were not incorporated into the model.

Payments -- The model used estimated rental rates for the purpose of calculating stewardship payments. In watersheds where there was no data on rental rates, the rates had to be imputed. The model assumes that only Tier II contracts or contracts transitioning to a higher tier will receive new practice payments. In the model for Alternatives 1 and 3, enhancement payments are assumed to either equal 50 percent of the contract statutory limit or 70 percent of

the contract payment, whichever is less. For the baseline and Alternative 2, enhancement payments are assumed to either equal 50 percent of the contract statutory limit or the difference between the regulatory limit and the sum of the stewardship payments and existing practice payments. These constraints differ from the limits placed by NRCS either in the rule or in the 2004 sign-up and so the model does not reflect actual contract requirements. Producer costs for enhancement activities are assumed to be 25 percent of the enhancement payments. This may be lower or higher than actual costs and so may affect producers' willingness or ability to undertake enhancement activities.

Benefits -- Due to a lack of data, no attempt was made to estimate the benefits generated by the implementation of enhancement activities. The model results therefore show a negative net benefit for the various program alternatives, because enhancements activities, which constitute a large portion of the contracts' cost, are assigned zero benefits. It is likely that enhancement activities do provide significant benefits, and therefore the results of the model should be viewed as a lower threshold of expected benefits. Tables 1a-1c provide the results of several sensitivity analyses that use different assumptions regarding enhancement activities' benefits to illustrate a range of other potential outcomes.

Discussion of Differences between Model and Other Program Estimates

The benefit-cost model results differ from the estimate of the Cost of Program (COP) model used to predict the actual number of contracts that could be funded based on the President's budget baseline. The benefit-cost model results have a much greater participation estimate and lower average acres per contract. These differences occur because the model enrolls a greater proportion of small farms than the President's budget estimate which reduces the average payments per farm and increases the number of CSP participants. The benefit-cost

model predicts a larger number of enrolled small farms than the President's budget because the model assumes that farms as small as 5 acres would participate, whereas in reality transaction costs may reduce participation of such small operations. This assumption results in a prediction that the average farm size would be about 200 acres. In contrast, the COP model using 2004 sign-up data indicates that the participating farm size would be about 750 acres on average. Varying the benefit-cost model assumption of minimum farm size has a dramatic effect on the benefit-cost model results. For example, increasing the smallest farm size to 50 acres decreases the number of farms predicted to enroll in CSP by the model by 40 percent and total government costs by 20 percent, all else being equal.

In addition to different farm sizes, the COP model assumes both a constrained budget consistent with a programmatic ramp-up funding scenario and that only about five percent of the farms would meet the minimum level of treatment for CSP. These different assumptions lead the COP model to estimate CSP participation at about 89,000 over the budget cycle of ten years while the benefit cost model estimates participation to total about 990,000 over fifteen years for the baseline (similar to the 2004 Interim Final Rule) scenario. The results of the unconstrained benefit-cost model underscore the need to use enrollment categories or other means to comply with the program's budget.

The COP is utilized by the agency to predict CSP participation using assumed budget caps within the President's budget and calculate the number of contracts alternative budget scenarios might fund. This model has assumptions that can be easily modified to reflect ever changing programmatic data. For example, the average acreage per contract and average cost per contract by tier can be estimated based on projections and then compared with actual sign-up data. The projections for the 2005 sign-up are estimated at 520 acres for a Tier I, 850 acres for

Tier II and 1,400 acres for Tier III contracts. The projections for the annual average cost per existing contract are estimated at \$6,000 for a Tier I, \$12,500 for Tier II, and \$26,600 for Tier III in FY 2005.

Discussion of Program Alternatives and Results

Baseline – No Action: The baseline assumes that CSP, as implemented in 2004 under the Interim Final Rule, will continue under the Interim Final Rule conditions.

National participation in CSP under the Baseline is estimated to be a total of 989,000 farms (or about 47 percent of all “farms” across the US, as defined by the ARMS Phase 3 survey) over a fifteen year period. The Midwest leads all regions in number of participants with about 37 percent of all enrollees, followed by the Southeast (about 21 percent) and the Northern Plains (about 14 percent). Almost eighty-three percent of participation is estimated to be at the Tier I level; 10 percent either at Tier II or Tier I transitioning into Tier II; and, about seven percent in Tier III. Over 75 percent of contract payments consist of enhancement payments. An estimate of the conservation assurance payments are found in Table 1 in the “Baseline” column of data.

Eligible producers receive these payments to increase assurance that conservation measures will continue to provide a broad and ongoing stream of environmental benefits for the public.

Conservation assurance payments may induce other farmers and ranchers to install additional conservation measures that further enhance environmental quality so that they can qualify for the CSP program.

Table 1. Selected Results of Modeling Alternative Program Structures, FY 2005-2020

Participation Totals – Total over entire 15 years and average annual estimates								
Tier Level	Baseline – Over 15 years	Difference from Baseline			Baseline-Average Annual 1/	Difference from Baseline		
		Alt. 1	Alt.2	Alt.3		Alt. 1	Alt.2	Alt.3
Tier 1	817,617	-83,069	4,967	-78,185	272,539	-27690	1656	-26062
Tier 2	73,958	-1,995	-1,809	-3,914	49,305	-1330	-1206	-2609
Tier 3	66,940	0	15	15	44,626	0	10	10

Tier 1 to 2	27,345	1,478	-3,538	-1,950	13,673	739	-1769	-975
Tier 2 to 3	3,520	0	-440	-440	2,347	0	-293	-293
Total	989,380	-83,586	-804	-84,474	382,490	-28281	-1602	-29929
Average Annual Payout								
Tier Level	Dollars per year on a 7% annualized rate				Dollars per year on a 3% annualized rate			
Tier 1	1,082	-672	-3	-674	1,006	-625	-1	-627
Tier 2	2,244	-331	55	-275	2,273	-327	58	-269
Tier 3	6,952	389	4	393	7,026	393	5	398
Tier 1 to 2	2,502	-1,233	1,478	15	2,432	-1,166	1,491	120
Tier 2 to 3	7,308	69	263	325	7,338	96	156	240
Benefits								
Location	Millions of dollars on a 7 % annualized rate				Millions of dollars on a 3 % annualized rate			
On-site	72	-4	-3	-7	74	-4	-3	-7
Off-site 2/	99	-9	0	-9	99	-9	0	-9
Total Benefits	171	-13	-2	-16	174	-13	-3	-17
Program Cost Information								
Costs	Millions of dollars on a 7 % annualized rate				Millions of dollars on a 3 % annualized rate			
Producer	198	-64	2	-62	127	-42	1	-41
Gov't TA	115	-32	2	-30	113	-30	2	-28
Gov't FA	767	-212	13	-199	750	-197	13	-184
Net Benefits, Net Returns, and Conservation Assurance Payment								
Net Benefits 3/	-143	82	-6	76	-66	59	-6	52
Net Returns 4/	641	-152	9	-144	697	-159	9	-150
Conservation Assurance Payments 5/	569	-148	11	-137	623	-155	12	-143
1/ Average annual participation assumes that 1/3 of all Tier 1 participants are enrolled in any one year: participants in other tiers are enrolled 2/3 of the time due to longer contract lives.								
2/ Off-site benefits are environmental benefits.								
3/ Net benefits are total benefits less producer conservation costs less the cost of technical assistance. Financial assistance to producers is a benefit for producers but a cost to taxpayers and, therefore cancels out of the net benefit calculation.								
4/ Net returns represents the financial assistance plus on-site benefits less producer conservation costs.								
5/ Conservation assurance payments are considered to be payments to producers that exceed the total cost of practice installation and adoption. Conservation assurance payments are a cost to society, and although they are a benefit to CSP participants, they are neither a net cost nor a net benefit to the economy at large.								

Features Common to all Alternatives – Enhancement payments are limited to 50 percent of the tier specific statutory limit; however, the calculation of enhancement payments differs by alternatives. Existing practice payments are calculated as 25 percent of the total stewardship payments, which is consistent with the Baseline (Interim Final Rule or Baseline scenario above). Cost-share rates for new practices installed with CSP funds are assumed to be consistent with Environmental Quality Incentives Program (EQIP) cost share rates of 50 percent.

Program Alternative 1 – This alternative is similar to the Interim Final Rule, except the enhancement payments are not calculated as the difference between the regulatory limit and the sum of the stewardship payments and existing practice payments and are instead calculated as 70

percent limit of the total contract payment. The regulatory limit is not a constraint in this alternative.

National participation under Alternative 1 registers declines in all regions with especially large decreases shown in the Midwest and the South Central regions as compared with the Baseline. Although a small increase in participation occurs in those transitioning from Tier I to Tier II, the large declines in Tier I and II participants cause over-all participation to drop. The participation changes noted above result from drops in contract payments for Tier I and II while payments for Tier III and for contracts transitioning to Tier III increase. All of the change in total payments results from changes in the benefit-cost model limits on enhancement payments. Annualized net benefits, producer net returns, and an estimate of the conservation assurance payment are found in Table 1.

Program Alternative 2 – This alternative is the same as the Baseline *except* contracts that include movement between Tier I and Tier II are allowed to increase the length of the contract from a maximum of 5 years to 10 years.

This alternative assumes that all the constraints consistent with the Interim Final Rule are in place (that is, similar to the Baseline) however it assumes that if a producer enters a contract at a Tier I level and wants to move up to a Tier II level, the contract life is extended from 5 years to 10 years. This removes the disincentive of limiting the contract life for producers willing to implement conservation plans that would yield greater potential environmental benefits.

National participation is virtually the same as under the Baseline. Slight drops in participation are registered in the Midwest and West with a slight increase in the Southeast and virtually no change in any other region. A higher participation level in Tier I is off-set by greater declines in Tier II and those transitioning from Tier I to II and from Tier II to III. Average

contract payment amounts are similar in Alternative 2 as compared with the Baseline for Tier I, II, and III participants, but are lower for those participants transitioning from Tier I to II and lower for those transitioning from Tier II to III. Annualized benefits are similar to those under the Baseline while annualized government costs (FA) are slightly higher (Table 1, Alternative 2 column).

Program Alternative 3 - This alternative combines the features of Alternatives 1 and 2: removing the regulatory limit on contract payments; calculating enhancement payments as 70 percent of total contract payments; and, allowing the length of contracts that include movement between Tier I and Tier II to increase from a maximum of 5 years to 10 years.

This alternative combines all the assumptions included in the previous alternatives. It is most similar to the Amendment to the Interim Final Rule, with the exception that the enhancement payments are limited as in Alternative 1.

National participation declines by about 8-percent compared to the Baseline – the lowest of all scenarios. Participation drops in all regions with the largest declines registered in the South Central region. As compared to the baseline, participation decreases in all tiers except Tier III. Regional and Tier level participation declines are caused by an overall drop in contract payments. The large number of Tier I participants and their lower payment rates masks the much larger payments to participants in the other tiers and the transition between tiers.

Selected Alternative

Alternative 3 is the most similar to the changes adopted by the Amendment to the Interim Final Rule. The model predicts that Alternative 3 will produce higher social net benefits than the Baseline. However, Alternative 3 results in lower net benefits than Alternative 1. There are programmatic reasons for selecting Alternative 3 (Amendment to the Interim Final Rule) over

Alternative 1. In response to public comments, the agency also decided that contracts that include a transition from Tier I to Tier II should be granted the same contract length limit that is provided to Tier II contracts.

Alternative 3 provides lower net returns to producers than the Baseline (2004 Interim Final Rule). This is primarily the result of assuming more stringent limits on enhancement payments in the model than those provided either in the 2004 Interim Final Rule or in the 2005 Amendment to the Interim Final Rule. To the extent that the agency would likely select less stringent limits for the 2005 sign-up, producers' actual net returns may be higher and more comparable to those provided by the Baseline.

Results Viewed Under Varying Assumptions Concerning Enhancement Benefits and Costs

The benefit cost analysis discusses the uncertainty in calculating enhancement benefits and the interpretation of costs. The following three tables highlight some of the results as found in Table 1, but report them under different assumptions regarding the annualized benefits and costs of enhancement activities. As would be expected, these assumptions have a great effect on expected program net benefits. Table 1a excludes all enhancement benefits and implementation costs from producer conservation costs and government financial assistance. Thus, net benefits are higher than those found in Table 1. Table 1b reports the results after enhancement benefits are set equal to enhancement implementation costs. Table 1c summarizes the model results the same way as in Table 1, but producer net returns now reflect that the ratio of enhancement benefits and costs are assumed to be the same as the ratio of existing annualized practice benefits and costs. Under all alternatives, the calculations produce the same level of conservation assurance payment received by producers, regardless of the assumptions made.

Table 1a. Summary of Total Benefits and Costs, and Incremental Change by Alternative, Excluding Enhancement Benefits and Implementation Costs (Annualized at 7 Percent, FY 2005-2020)¹

Alternative	Benefits			Producer Conservation Costs	Gov't Expenditure		Net Benefit ³	Producer Net Returns ⁴	Conservation Assurance Payment ⁵
	Onsite	Offsite ²	Total		Tech. Assist.	Fin. Assist.			
	Annual Payment Value, \$ Millions								
Baseline	\$72	\$99	\$171	\$53	\$28	\$185	\$90	\$204	\$132
1	-\$4	-\$9	-\$13	-\$11	\$0	-\$2	-\$2	\$5	\$9
2	-\$3	\$0	-\$2	\$4	\$3	\$22	-\$10	\$16	\$18
3	-\$7	-\$9	-\$16	-\$12	\$0	\$2	-\$4	\$7	\$14

Table 1b. Summary of Total Benefits and Costs, and Incremental Change by Alternative, with Enhancement Benefits Equal to Enhancement Implementation Costs (Annualized at 7 percent, FY 2005-2020)¹

Alternative	Benefits			Producer Conservation Costs	Gov't Expenditure		Net Benefit ³	Producer Net Returns ⁴	Conservation Assurance Payment ⁵
	Onsite	Offsite ²	Total		Tech. Assist.	Fin. Assist.			
	Annual Payment Value, \$ Millions								
Baseline	\$319	\$434	\$753	\$198	\$115	\$767	\$439	\$887	\$569
1	-\$25	-\$40	-\$66	-\$64	-\$32	-\$212	\$30	-\$173	-\$148
2	-\$5	\$0	-\$5	\$2	\$2	\$13	-\$8	\$6	\$11
3	-\$28	-\$38	-\$66	-\$62	-\$30	-\$199	\$26	-\$165	-\$137

Table 1c. Summary of Total Benefits and Costs with Enhancements Benefits Using Same Ratio as New Practice and Existing Practice Benefits and Costs (Annualized at 7 percent, FY 2005-2020)¹

Alternative	Benefits			Producer Conservation Costs	Gov't Expenditure		Net Benefit ³	Producer Net Returns ⁴	Conservation Assurance Payment ⁵
	Onsite	Offsite ²	Total		TA	FA			
	Annual Payment Value, \$ Millions								
Baseline	\$343	\$1,182	\$1,525	\$198	\$115	\$767	\$1,211	\$912	\$569
1	-\$75	-\$292	-\$367	-\$64	-\$32	-\$212	-\$271	-\$223	-\$148
2	-\$3	-\$1	-\$4	\$2	\$2	\$13	-\$8	\$8	\$11
3	-\$70	-\$260	-\$330	-\$62	-\$30	-\$199	-\$238	-\$206	-\$137

¹ Annual Payment over 15 years at 7% interest.

² Offsite Benefits are environmental benefits.

³ Net Benefits are total benefits less producer conservation costs (i.e., the cost of installing and maintaining conservation practices) and the cost of technical assistance that accompanies those activities. Financial assistance to producers is a benefit for producers but a cost to taxpayers and, therefore, cancels out of the net benefit calculation.

⁴ Producer net returns is financial assistance plus on-site benefits less producer conservation cost.

⁵ Conservation Assurance Payments, in this case, are considered to be payments to producers that exceed the total cost of practice installation/adoption. Conservation Assurance Payments are a cost to society, and although they are a benefit to CSP participants, therefore are neither a net cost nor net benefit to the economy at large.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 13132, Federalism

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to Section 2702 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the Secretary “shall use the authority provided under section 808(2) of title 5, United States Code.” As required by 5 U.S.C. 808(2), NRCS hereby finds that additional public notice and comment prior to the effective date of this amendment to the interim final rule are unnecessary and contrary to the public interest. Even though proposed rulemaking was not required for this rulemaking, NRCS published in the Federal Register an Advance Notice of

Proposed Rulemaking on February 18, 2003 (68 FR 7720), and a Notice of Proposed Rulemaking on January 2, 2004 (69 FR 194). In the interim final rule published in the Federal Register on June 21, 2004 (69 FR 34501), NRCS responded to the comments received during the comment period for the proposed rulemaking. The comment period for the original interim final rule ended October 5, 2004 (69 FR 56159). In this amendment to the interim final rule, NRCS responds to the comments received pursuant to the interim final rule, and makes some minor adjustments based on those comments and its experience from implementing CSP in FY 2004 in 18 watersheds encompassing 22 States. In FY 2005, NRCS will implement CSP in 202 watersheds encompassing all 50 States and the Caribbean. NRCS would like to gain additional information based on the more extensive sign-up prior to finalizing the CSP regulatory provisions, and thus is providing an additional opportunity to comment. However, NRCS does not believe that additional public notice through 5 USC 808(1) is necessary prior to the effective date of this amendment to the interim final rule. Congress authorized \$202 million to be available to implement CSP in FY 2005. NRCS needs to obligate these funds by September 30, 2005, in order for them to be available for payment to CSP program participants. To ensure that NRCS has the adjusted regulatory framework in place for the FY 2005 sign-up, NRCS determines that it is in the public interest for this amendment to the interim rule to be in effect upon its publication in the Federal Register.

Environmental Analysis

A final Environmental Assessment (EA) has been prepared to assist in determining whether this amendment would have a significant impact on the quality of the human environment. Based on the results of the final EA, NRCS issued a Finding of No Significant Adverse Impact (FONSI) on December 16, 2004. Copies of the final EA and FONSI may be

obtained from Kevin Brown, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5241-S, Washington, DC 20250-2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under "Program Information".

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting record keeping or estimated paperwork burden associated with this amendment.

Government Paperwork Elimination Act

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

Executive Order 12988

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

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

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354), USDA classified this rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from Kevin Brown, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under "Program Information".

Unfunded Mandates Reform Act of 1995

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

List of Subjects in 7 CFR Part 1469

Agricultural operations, Conservation practices, Conservation stewardship contract, Conservation stewardship plan, Plant and animal management, Soil and water conservation, Soil quality, Water and air quality.

Accordingly, Title 7, Chapter XIV of the Code of Federal Regulations is amended by revising part 1469 to read as follows:

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.*

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

(c) 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, Indian Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of an Indian Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Indian 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. This includes land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the applicant 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 Corporation 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 crop-line 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 nonforest 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. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber or other agricultural products.

Hayland means a subcategory of “cropland” managed for the production of forage crops that are machine harvested. The crop may be grasses, legumes, or a combination of both.

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 standards 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 and measures 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, energy 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 conservation stewardship 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 Indian Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed 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 any signatory to 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 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, tundra, coastal marshes and wet meadows 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 fertility 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 NRCS.

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.

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 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 there from.

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 Corporation program administered by NRCS 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 are participants in an existing conservation stewardship 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 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); and

(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 or a limited resource 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, 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 land 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;

(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 the minimum level of treatment on the eligible land 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 applicant 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 eligible land uses within 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 eligible 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 for all eligible land uses 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 addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water.

(iii) The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.

(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 for:

- (i) A forage-animal balance;
- (ii) Proper livestock distribution;
- (iii) Timing of use; and
- (iv) 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 having a fully implemented resource management system that meets the quality criteria for the local NRCS FOTG for all applicable 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;

(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 index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 using a general or species specific habitat assessment guide; and

(ii) All riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface runoff; reduce nutrients and other pollutants in shallow subsurface water

flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods.

(5) In the instance of a significant natural event, such as drought, wildfire, 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.

(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 may be defined by criteria related to resource concerns and levels of historic conservation treatment, including 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 and subcategory based on the criteria specified in the sign-up notice and into a Tier based on the criteria in 1469.5(e). 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.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the enrollment categories and subcategories funded in the given sign-up, NRCS will make payments as described in the contract in return for the implementation and/or 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 and associated case file information 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;

(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; and,

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

(b) Conservation stewardship plan.

(1) The conservation stewardship plan and associated case file information 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 applicant 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 is required for a contract to include a 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.

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

(3) 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 Programs 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;

(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 as 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 to 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 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 conservation stewardship 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 eligible land uses on 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;

and,

(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) Participants 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 provisions, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion of land 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.

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

(i) Address an additional locally significant resource concern, as described in section III of the NRCS FOTG over the entire agricultural operation. Applicants may satisfy this

requirement by demonstrating that the locally significant resource concern is not applicable to their operation or that they have already addressed it in accordance with NRCS' quality criteria; and

(ii) 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.

(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 participation 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 which 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 which transitions to a higher tier will be modified to receive the higher payments once the required level of treatment has been achieved and field verified by NRCS.

(4) A contract which includes a transition from Tier I to Tier II or III may be adjusted in length up to 10 years beginning from the original contract date.

(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) Comply with the terms of the 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 any violation and comply with the terms of the contract and attachments thereto. If a violation continues, the State Conservationist may terminate the conservation stewardship contract, and

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

(4) Specify the 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 conservation stewardship plan,

(ii) Relate to the actual implementation of additional conservation measures as described in the conservation stewardship 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; and,

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

(f) Practices scheduled in contracts must be applied and maintained within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract.

(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) For contracts encompassing the 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.

§ 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 a payment was received to ensure that the new practice or enhancement achieves its intended purpose for the life span of the conservation treatment, 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 initiate contract violation procedures as specified in § 1469.25. 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 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 paragraph (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 the 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) 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. Payment is limited to not more than ten percent of the contract acres. 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 payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay 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 the conservation stewardship contract requires the implementation of a new structural or land management practice, NRCS may pay a percentage of the cost of installing the new practice. 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) 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.

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

(5) If additional practices are installed or implemented to advance a contract from one tier of participation to a higher tier, the practice must be certified as meeting FOTG practice standards by NRCS.

(6) 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.

(7) NRCS will not pay a new practice payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(8) 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 contract'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 the 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) An enhancement payment will be made to encourage a producer to perform or continue a management practice or activity, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project that produces enhanced environmental performance and benefits or produces information and data to improve a resource concern or update the NRCS technical guides. Enhancement payments will be:

(A) For activities where NRCS can demonstrate the economic value of the environmental benefits, based on a given activity's expected environmental benefit value. The payment may not exceed the activity's expected economic value; or

(B) For activities where NRCS cannot demonstrate the economic value of the environmental benefits, a rate that will not exceed a producer's cost to implement a given activity.

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

(6) The Chief may set a not-to-exceed limit or variable payment rate 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 new practice payment will not exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year with the exception of beginning and limited resource producers, in which case the new practice payment may be up to 65 percent.

(f) The new practice and enhancement components of the conservation stewardship contract payment may increase once the participant applies and agrees to maintain 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.

(i) NRCS may not make any payments to participants for:

- (1) Practices within their conservation stewardship plan that are required to meet conservation compliance requirements found in 7 CFR Part 12;
- (2) Practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the conservation stewardship contract approval;
- (3) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;
- (4) The purchase or maintenance of equipment;
- (5) A non-land based structure that is not integral to a land based practice, as determined by the Chief; or
- (6) New practices that were applied with cost-share assistance through other USDA cost-share programs.

§ 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.
- (b) Participants may request a modification to their contract to change their tier of participation under a conservation stewardship contract once the measures determined necessary by NRCS to meet the next tier level have been established.

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

(1) NRCS must be notified within 60 days of the transfer of interest and the transferee's acceptance of the contract terms and conditions, 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.

§ 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 the violation continues, the State Conservationist may terminate the conservation stewardship 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 payments 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 contract terms and conditions have been fully complied with before termination of the contract.

(g) In carrying out 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 potential participants 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 multiple 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;
- (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 their 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 participant 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 requirements 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 participant erroneously represented any fact affecting a CSP determination made in accordance with this part, the participant's conservation stewardship contract will be terminated immediately in accordance with § 1469.25(b). The participant will forfeit all rights for future contract payments, and must refund payments received, plus interest, and liquidated damages as described in § 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, and liquidated damages as determined in accordance with § 1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant's interest in all conservation stewardship 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.

Signed in Washington, DC, on _____, 2005

BRUCE I. KNIGHT

Vice President

Commodity Credit Corporation

Chief

Natural Resources Conservation Service