

these continuing changes was to design a new conservation entitlement program with a cap on its total expenditures over multiple years. Subsequent to the enactment of the 2002 Act, the Omnibus Bill of 2003 amended the Act to limit CSP's total expenditures to a total of \$3.8 billion over eleven years (Fiscal Year 2003 through Fiscal Year 2013). The statute did not provide direction as to how the Secretary should implement a broad entitlement program with the statutory fiscal constraints.

The Omnibus Appropriations Bill for Fiscal Year 2004 (Conference Report H. Rpt. 108-401), however, contains language that, if enacted, would remove the \$3.8 billion funding limitation for the program over eleven years, but also institute a cap for Fiscal Year 2004 of \$41 million. While considering the potential change in law, the Department decided to publish and seek public comment on the preferred CSP alternative contained in this proposed rule. Under the preferred alternative, NRCS can implement CSP either with or without an expenditure cap. In the interim, the Administration will continue to consider the potential program design and implementation issues that would arise if current law were amended and the multiple-year expenditure cap were removed. Pending the enactment of this legislation, NRCS intends to publish a supplement to this proposed rule to address the potential changes in law.

Any limit imposed by a budget cap greatly reduces the potential scope of the program. For example, USDA's Economic Research Service (ERS) estimates that over 1.8 million farms and ranches may be eligible for CSP, using the land eligibility criteria found in the authorizing legislation. If all of these agricultural operations were enrolled, the cost of the program would exceed the current \$3.77 billion cap potentially in the first sign-up. In contrast, NRCS estimates that the budget cap would allow less than 50,000 total agricultural operations to participate over the life of the program. Estimates derived from a variety of analyses indicate that the average Tier III contract, based on nationally averaged data, could be near \$15,000 per year. If contracts were an average of 7 years in duration, the statutory funding could support as estimated 30,000 Tier III contracts. The average Tier I and Tier II contracts could be near \$7,000 annually. If contracts were to average 5 years in duration, the statutory funding could support an estimated 90,000 Tier I and II contracts.

Furthermore, NRCS expects that a large number of producers will seek

participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus the statutory cap on technical assistance of 15% becomes another limiting factor for implementing CSP. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the available funds.

The Secretary is proposing ways to address the capped entitlement issue and still deliver an effective CSP program by conducting periodic CSP sign-ups and through the use of additional sign-up eligibility requirements, contract requirements for additional conservation treatment, enrollment categories for determining funding, and constrained base and practice payments.

In this rulemaking NRCS is proposing an approach based on five elements:

1. Limit Sign-ups: Conduct periodic CSP sign-ups.
2. Eligibility: Criteria should be sufficiently rigorous to ensure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.
3. Contracts: Requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.
4. Enrollment Categories: Prioritize funding to ensure that those producers with the highest commitment to conservation are funded first.
5. Payments: Structure payments to ensure that environmental benefits will be achieved.

Below is a detailed discussion of the proposed approach as well as other alternatives. NRCS seeks comment on its overall approach and on the alternatives.

#### *NRCS Preferred Approach*

##### **1. Limit Sign-Ups: Conduct Periodic CSP Sign-Ups**

NRCS proposes to offer periodic CSP sign-ups, similar to sign-ups conducted by USDA for the Conservation Reserve Program (CRP). NRCS would publish a CSP sign-up announcement prior to the opening of the sign-up period. The public sign-up announcement would include important programmatic information (as discussed in Section 1469.20 of the regulation), including the length of the sign-up period and the "size" of the sign-up (as measured in the total dollar value of the CSP contracts NRCS enroll into the program from a given sign-up).

NRCS believes implementing CSP through sign-ups is the best way to

manage and effectively deliver the program.

##### **2. Eligibility: Criteria Should Be Sufficiently Rigorous To Ensure That Participants Are Committed to Conservation Stewardship. Additionally, Eligibility Criteria Should Ensure That the Most Pressing Resource Concerns Are Addressed**

The CSP statute defines eligible producers as those who submit an approved conservation security plan and enter into a CSP contract to carry out the Conservation security plan. Eligible land is defined as all private agricultural land, including incidental forested land, excluding land that is under a CRP, WRP, or GRP contract, or that has not been planted or considered to be planted in the last 4 of the 6 years preceding the enactment of the 2002 Act.

To ensure that CSP participants have a demonstrated commitment to conservation, NRCS is proposing to require CSP applicants to address specified resource concerns, soil quality and water quality for tier I and tier II levels prior to program enrollment; and NRCS estimates that requiring existing conservation stewardship will increase the environmental benefits generated by the program.

Soil Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Soil Condition in Quality Criteria of the NRCS technical guides. Soil condition in the NRCS technical guides includes concerns related to depletion of soil organic matter content and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence, root penetration and overall soil productivity.

Water Quality for the purposes of the CSP means resource concerns and/or opportunities that are addressed under Quality Criteria for Water Quality of the NRCS technical guides, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters and excessive nutrients and pesticides in ground waters.

Conservation systems developed for the purpose of meeting quality criteria for water quality and soil quality will vary depending on site characteristics including: Slope, climate, soil texture, and other soil characteristics and agricultural operation management considerations. Conservation systems are designed to match the particular business objectives and specific location of the agricultural operation. Conservation practices typically