

*4. Balance of payments across base, maintenance, and enhancement.*

Section 1238C(b)(2)(B) of the Act restricts the maximum base payment to a percentage of the total contract payment limitation. Base payments can be no more than 25 percent of Tier I contracts and 30 percent for Tiers II and III. NRCS asked for comments on the balance between the base payment, maintenance payment, and enhancement payment that would best reward good stewards and obtain additional conservation benefits. NRCS received 382 comments on this issue, of which 309 are identifiable as "form" responses. Consensus favored somewhat less emphasis or lower payment rates for the base payment component and greater emphasis or higher payment rates for maintenance cost-share payments. However, some supported a reasonable enhanced payment component. Views differed regarding who should determine the balance of payments, as some support giving State or local interests input in determining the ultimate balance, particularly for maintenance cost-share and enhanced payments, while others supported a national directive.

The proposed rule sets base payments to no more than 25 percent of the contract cap in Tier I, and no more than 30 percent of the contract cap in Tier II and III. It provides for a methodology to set an appropriate rate as allowed by the statute. This rate will be lower than the national rental rates through the use of a consistent reduction factor. Maintenance payments have been redesignated as "existing practice" payments and will be determined by the State Conservationist based on a national list tailored to match the needs of the locality. To increase additional net benefits, NRCS will be requiring a high level of additional conservation performance for eligibility and through the enhancement and contract requirements provisions of the program. Tier I and Tier II participants would be required to address additional significant resource concerns on their agricultural operations up to the NRCS required level of treatment. Some of the practices necessary to address those resource concerns might be funded with a new practice payment in CSP, although at a lower rate than other NRCS programs. Some enhancement activities would also require participants to pursue intensive management activities that would exceed the NRCS minimum level of treatment with the potential to provide substantial improvement to the condition of the resources. NRCS

believes this proposal encourages all participants, regardless of the tier of participation, including limited resource and beginning producers and small farms, to pursue a higher level of conservation and to participate in locally led conservation priorities, carry out record keeping, assessment activities and on-farm demonstration projects.

*5. Definition of Agricultural Operation.* The Act refers to "agriculture operations" without defining the term. NRCS has evaluated various definition alternatives, and are determined to seek public comment to evaluate the most appropriate definition considering the various forms of ownership and landowner-tenant relationships. NRCS received 76 comments on this issue, with another 27 suggested that an agriculture operation include all land owned and operated by an individual or entity, and another 25 respondents favored the use of a Farm Service Agency (FSA) number system to define an agriculture operation. A small number of respondents suggested that an agriculture operation should consist of owned land only, with at least one of those individuals wanting to narrow the definition further by limiting the definition to that land used or managed in a similar fashion.

Consistent with GPCP, NRCS proposes in Section 1469.3 to define "agricultural operation" as "all agricultural land, and other lands determined by the Chief, NRCS, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation." NRCS believes this proposed definition meets the intent of the legislation. NRCS also believes that this definition is more clear, better promotes operation-wide conservation, and could reduce the number of contracts in which a participant can engage. Active personal management as defined in the rule ensures that the participant personally provides day-to-day conservation management decisions essential to provide the intensity of management necessary to achieve the goals of the program. A participant would not need to own eligible land, but would need to demonstrate control of the land for the life of the CSP contract.

This definition results in the potential for multiple tracts and farms to be within one operation and reduces the potential number of piece-meal contracts feared by some respondents. NRCS believes that the value of making conservation management decisions

based on resources concerns is more important than fitting CSP to the design of existing commodity programs. This definition supports the many respondents who desired a program that actually benefits those who work the land.

*6. Eligible land.* In Section 1238A(b)(2), the Act specifies eligible land as cropland, grassland, improved pasture land, prairie land, rangeland, land under the jurisdiction of an Indian Tribe, as well as forestland that is an incidental part of the agricultural operation. NRCS sought comments regarding which other areas of a farm or ranch should be included in the agriculture operation, and thus be treated land under the contract. Such lands may or may not be eligible for payment, but they could be included in requirements for participation at a given Tier level. NRCS received 98 comments on this issue. Nearly two-thirds of the respondents said that the land eligible for payment should include all areas of a farm or ranch, except for those areas that are irrelevant to agricultural operations, such as home lawns and driveways, and infrastructure elements for which no NRCS standard exists. All respondents supported the inclusion of non-cropped areas, such as riparian zones, turn rows, feedlots, buildings, and related facilities. One-fifth of the respondents recommended including all areas of a farm or ranch, including non-cropped areas, as eligible land, except for buildings, equipment storage facilities, and similar parts of farm and ranch infrastructure.

In Section 1469.5(b), NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use within the land area for purposes of calculating base payments. For Tier III contracts, NRCS proposes to require that participants treat to the quality criteria level all of their agricultural operation's land, including farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. This approach ensures that a Tier III participant's entire agriculture operation meets the quality criteria for the identified resource concerns and that its management is consistent with the NRCS planning process. The approach also ensures that Tier III operations will be model conservation enterprises.

NRCS is also proposing in Section 1469.5(b), for the purposes of CSP, that forestland offered for inclusion in a CSP contract as an incidental part of the agricultural operation must meet the following guidelines: