

payments are shared between owners and operators on a fair and equitable basis. NRCS received 72 comments on this issue. Respondents raised concerns about the impact of CSP provisions on owner/operator relationships, including changes in rental rates or changes in operators. Eleven respondents supported splitting payments on the basis of how commodity program payments are split in a general locale; 22 supported letting landowners and operators negotiate the split; 17 suggested splitting payments on the basis of the monetary investment made and work performed to implement a Conservation security plan; 7 supported making all payments to landowners only; 3 supported making all payments to tenants on the assumption that tenants are doing most of the work and making most of the financial investment; and 8 supported using EQIP, or some other existing program model, to resolve this issue. Generally, the comments favored letting the parties on the ground deal with this issue rather than have USDA determine the outcome.

NRCS has determined that tenants and landowners will receive appropriate payment shares based on their contributions to the conservation management and land stewardship as determined by them. Before NRCS will approve a contract, tenants and owners must agree to their interest in the payments for both parties as documented in the program contract.

**11. Ownership and Control.** The Act requires a minimum contract length of 5 years. Many landlord-tenant relationships are of a shorter duration. NRCS sought comments about whether eligible participants need to have control of the land for the contract period. NRCS received 80 comments, with respondents divided over the question of requiring control of the land for the length of the CSP contract (*e.g.*, 5 years). Thirty-five respondents supported requiring applicants have control, or reasonable assurance of control for the life of the CSP contract. However, of these, 15 would allow the contract to be modified, cancelled, or have a succession of interest clause added. Six respondents specified the landowner should be the main applicant. Thirty-four respondents did not support a requirement for CSP applicants to have control of the land for the life of a CSP contract. This group desired the program to be more flexible to allow all tenants with short-term leases access to the program. Eight others recommended that CSP contract lengths vary with the lease arrangement.

Consistent with EQIP, NRCS proposes that the applicant must show control of the land for the length of the contract period either through a lease or proof of a long-standing relationship. Recognizing the frequent turnover of rented land in some parts of the country, it may be difficult to have a stable land base to satisfy this contract requirement. If the applicant cannot show control of a parcel of the agricultural operation for the life of the contract, that part of the agricultural operation does not qualify for any payment component. However, it is required to be maintained at the same conservation standard as the rest of the operation, and the land is considered within the area of the contract. Situations that result in noncompliance with requirements of the contract will be handled as a contract violation according to Section 1469.25.

**12. Program focus and prioritization.** In order to meet the Administration's goals to maximize the conservation and improvement of natural resources, NRCS believes it is necessary to prioritize assistance offered through CSP. Since the law does not provide for a funding or acreage cap, NRCS sought comments on ways to focus the program. A number of suggestions were offered to the public on ways the program could be limited.

NRCS received 568 comments on this issue, with 493 considered "form" responses. Commentators overwhelmingly supported the entitlement status of the CSP and the program being made available to producers nationwide. There was strong support, secondarily, for prioritizing applications based on the CSP tier arrangement with Tier III contracts given preference. There appeared to be mixed reaction to how allocations should be made to the State and/or local level. There was more support to allocate funds using a formula based upon measurable environmental need, rather than other options NRCS considered, including: limiting the application process to only the projects with the highest conservation potential; conducting a random lottery-like process for participation; limiting the program to specific geographic areas or a certain number of States; conducting a national or State level request for proposal process; or limiting sign-up to one national or State identified natural resource concern.

NRCS has addressed the constraint of program funding by defining eligibility criteria that limit program participation, and establishing a system of conservation enrollment categories that would enable the Secretary to prioritize

funding to eligible applicants consistent with sign-up funding allocation. NRCS is proposing to use watersheds as the mechanism for focusing CSP participation in high-priority areas of the country. Watersheds could be selected to focus on national and region-level environmental quality concerns. NRCS would nationally rank watersheds based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Applicants would be placed in a particular enrollment category based on their level of conservation commitment and other factors to be announced during sign-up. All applicants who meet CSP eligibility criteria and are placed in a category selected for funding in the sign-up would receive a payment consistent with their contracts. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice.

**13. Energy as a natural resource concern.** The Act identifies energy as a resource concern in Section 1238A(a). NRCS does not presently have quality criteria standards for energy to analyze of the effect of the planned conservation activities. NRCS sought comments on how energy could be incorporated into the program requirements. Although 103 comments were received, no comments offered specific approaches for implementing this provision. Most respondents did not address the questions asked in the Advanced Notice of Proposed Rulemaking. However, 62 supported including energy as a resource concern in the program. One respondent noted that energy conservation was a clear objective of the CSP, but recommended that it did not warrant designation as a separate resource of concern, with the subsequent development of a set of quality criteria similar to those for soil, water, air, plants, and animals. This commentator suggested that energy conservation be addressed under the umbrella of one of the existing primary resources of concern. Four others recommended waiting for more funding before including energy as a resource concern, and 36 had other general energy-related comments.

There are virtually dozens of opportunities to impact energy as a resource through the adoption of conservation practices and systems and by applying intensive management activities. Agricultural operations can impact energy use efficiency directly by reductions in fuel use during planting, harvesting cycles, and pumping irrigation water, or indirectly through reductions in fertilizer and pesticide applications. For example,