

continuity of the agricultural operation fluctuates from year to year or where leases are not maintained, NRCS proposes that the participant practice the same level of conservation treatment on all land under their control on a year to year basis even though they may not have control on each parcel for the life of the CSP contract. Concerns have been expressed through the ANPR process that producers not accept stewardship payments while at the same time operating land outside the CSP contract at a less-than-acceptable level of treatment. NRCS is seeking comments on this provision.

NRCS proposes to include non-cropped areas, such as turn rows or riparian areas that are incidental to the land use in the land area, for purposes of calculating base payments.

The Secretary is authorized to set eligibility criteria and contract requirements. The proposed rule sets the required level of treatment to address resource concerns that each applicant must meet for program eligibility, according to NRCS technical guides, and allows the Chief to designate additional, specific eligibility requirements or activities that will be required for inclusion in a CSP contract for a given sign-up. Such requirements might be additional enhancements such as wildlife habitat or air quality activities.

Many who commented on the ANPR desired to make CSP supportive for those who actually work the land. Thus, there was strong support to allow contract modifications without penalties, to allow succession of interest clauses in the contract and for not requiring participants to control the land for 5 years.

NRCS recommends that contract modifications and succession of interest clauses be allowed in the contract without penalties. This section additionally proposes that participants must have control of the land for the contract period. NRCS believes that this approach would reduce the administrative burden on NRCS, reduce client paperwork, and increase the likelihood that the environmental benefits the participants achieve will endure. For the CSP contract, the participant will certify that they have control of the land for the contract period and will provide appropriate evidence, as determined by NRCS.

To be eligible for CSP, a producer must be applying a level of conservation treatment that meets or exceeds the minimum requirements. Producers who have historically met or exceeded the requirements, in some cases, may have endured a flood, fire, or other event that

has either destroyed or damaged practices that would have made them eligible for CSP. NRCS is seeking comment on whether there should be any special dispensation or consideration given for this situation.

NRCS is proposing to use watersheds as a mechanism for focusing CSP participation. NRCS would nationally rank watersheds to focus on conservation and environmental quality concerns based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Watersheds ranked for potential CSP enrollment will be announced in the sign-up notice. Once the highest ranked watershed's applications were funded, the next watershed would be funded, etc. Funding would be distributed to each priority watershed to fund sub-categories until it was exhausted. NRCS is seeking comment on how each watershed would be funded.

NRCS is proposing that the majority of the agricultural operation is to be located within a selected priority watershed. Additionally, the following Tier specific requirements must be met:

(i) Tier I—"The applicant must have adequately addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment on part of the agricultural operation.

(ii) Tier II—"The applicant must have adequately addressed the nationally significant resource concerns of Soil Quality and Water Quality to the minimum level of treatment on the entire agricultural operation.

(iii) Tier III—"The applicant must have adequately addressed all of the resource concerns listed in Section III of the NRCS Field Office Technical Guide with a resource management system that meets the minimum level of treatment on the entire agricultural operation. For Tier III contracts, NRCS proposes to require that participants treat, to the quality criteria level, all of their 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 all identified resource concerns and that its management is consistent with the NRCS technical guides. The approach also ensures that the program addresses more resources per Federal dollar expended, and that Tier III operations will be model conservation enterprises.

As a contract requirement, the participant will be required to do

additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement. NRCS is seeking comment on these minimum eligibility and contract requirements. NRCS is also seeking comments on the utility of a self screening tool (both Web-based and hardcopy) to assist producers in determining if they should consider application to CSP. Should this self screening tool be a regulatory requirement and described in the proposed rule?

Section 1469.6 Enrollment Categories

Given the unusual nature of a capped entitlement program, NRCS looked for precedents in other Federal programs. One such program, a health care benefit, Enrollment "Provision of Hospital and Outreach Care to Veterans, is implemented by the Department of Veterans Affairs (38 CFR part 17), which was used to pattern much of this discussion.

In managing the provisions of this part, the Secretary shall establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion and remain within the statutory budget caps. The enrollment categories are intended to identify and prioritize eligible producers within the selected watersheds for funding. Applicants would be eligible to be enrolled based on science-based, data supported, priority categories consistent with historic conservation performance established prior to the announcement of a sign-up. NRCS will develop criteria for construction of the enrollment categories, such as soil condition index, soil and water quality conservation practices and systems, and grazing land condition, and publish them for comment in the **Federal Register**. Categories will be based on the following principles:

(i) Categories will serve to sustain past environmental gains for nationally significant resource concerns consistent with the producer's historic conservation performance.

(ii) Category criteria will be sharply defined and science-based.

(iii) Categories will use natural resource, demographic, and other data sources to support the participation assumptions for each category.

(iv) The highest priority categories will require additional conservation treatment or enhancement activities to achieve the additional program benefits, and

(v) Categories will accommodate the adoption of new and emerging technologies.