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From: mnoble@msawg.org
Sent: Tuesday, October 05, 2004 7:22 PM
To: FarmBillRules
Subject: ATTN: Conservation Security Program
Attachments: SAC-Comments-InterimFinalRule.10.05.04.rtf

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SAC-Comments-InterimFinalRule....

Hello NRCS Staff (and Craig Derickson):

I have attached a file to this message with the comments of the Sustainable Agriculture Coalition on the CSP Interim Final Rule.

Please contact me if you have any trouble opening or reading this file.

Thank you for your attention.

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October 5, 2004

Mr. Craig Derickson, Conservation Security Program Manager,
Financial Assistance Programs Division,
USDA NRCS,
P.O. Box 2890,
Washington, DC 20013-2890
Submitted by e-mail: FarmBillRules@usda.gov

Re: Interim Final Rule for the Conservation Security Program

Dear Mr. Derickson:

This letter and attachment contains the comments and recommendations of the Sustainable Agriculture Coalition in response to the Interim Final Rule for the Conservation Security Program (7 CFR 1469), published in the Federal Register on June 21, 2004 (69 Fed. Reg. at pp. 34501-34532).

As you know, the Sustainable Agriculture Coalition (SAC) played a central role in the development and passage of the Conservation Security Program (CSP), and continued its outreach to farmers and ranchers and public education during the CSP implementation phase. We are proud of this accomplishment and anxious to see this first-of-a-kind federal green payments program implemented on the ground to the benefit of innovative farmers and ranchers utilizing sustainable agriculture and conservation systems. Moreover, with adequate implementation, the CSP can foster a shift for all of U.S. agriculture toward a more sustainable path.

The Sustainable Agriculture Coalition represents family farm, rural development, and conservation and environmental organizations that share a commitment to federal policy reform to promote sustainable agriculture and rural development. Coalition member organizations include the Agriculture and Land Based Training Association, American Natural Heritage Foundation, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Center for Rural Affairs, Dakota Rural Action, Delta Land and Community, Inc., Future Harvest/CASA (Chesapeake Alliance for Sustainable Agriculture), Illinois Stewardship Alliance, Innovative Farmers of Ohio, Institute for Agriculture and Trade Policy, Iowa Environmental Council, Iowa Natural Heritage Foundation, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Agricultural Stewardship Association, Midwest Organic and Sustainable Education Service (MOSES), The Minnesota Project, National Catholic Rural Life Conference, National Center for Appropriate

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Technology, Northern Plains Sustainable Agriculture Society, Ohio Ecological Food and Farm Association, Organic Farming Research Foundation, and the Sierra Club Agriculture Committee.

During the first CSP sign-up, many of our 26 member organizations engaged in outreach programs to provide assistance to farmers and ranchers in working through the requirements of the CSP Interim Final Rule and other administrative materials including the CSP Self-Assessment Workbook. For instance, the Kansas Rural Center worked in cooperation with the Kansas NRCS State Conservationist on CSP outreach, the Minnesota Project produced CSP outreach materials for use by farmers around the nation and helped to organize Minnesota NRCS listening sessions on the CSP proposed rule, the Center for Rural Affairs operated a nationwide hotline to assist farmers and ranchers during the CSP sign-up period, and the Land Stewardship Project provided detailed CSP sign-up information to farmers in the Blue Earth watershed. These organizations and others are currently engaged in follow-up work with farmers and ranchers to evaluate the first sign-up process and other features of this first year of CSP implementation. SAC will also be working with Practical Farmers of Iowa to survey farmers about the CSP sign-up process in several of the watersheds selected for this first CSP sign-up. In addition, SAC is working with other sustainable agriculture and conservation organizations around the nation to gather comprehensive information on CSP implementation under the Interim Final Rule.

While we thank the NRCS for this opportunity to comment on the CSP Interim Final Rule, we continue to request that NRCS extend the comment period by until November 29, 2004 to ensure that farmers, ranchers, and other individuals and organizations submitting public comments have the opportunity to assess adequately the results of the first CSP sign-up period. In the absence of this extension, we request that NRCS provide a full public disclosure of sign-up data and internal evaluation materials and hold public listening sessions and an opportunity for supplemental written comments to get feedback on the first CSP sign-up from farmers, ranchers, and other key stakeholders.

In addition, we request that if NRCS continues to use administrative notices and limited sign-up periods in implementing CSP, NRCS issue the notices in a timely fashion and provide for public notice and comment as promised in the CSP proposed rule. In our view, many of the program components that NRCS is amending through the use of CSP notices are integral parts of the CSP program. Changes to these program components with each sign-up announcement are substantive amendments of the CSP regulations that should be subject to notice and public comment.

Sincerely,

Martha L. Noble

Martha L. Noble,
Senior Policy Analyst
Sustainable Agriculture Coalition

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cc: NRCS Chief Bruce Knight

Deputy Chief Jose Acevedo

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**Sustainable Agriculture Coalition
COMMENTS AND RECOMMENDATIONS
With respect to the
Interim Final Rule for the Conservation Security Program (7 CFR 1469)
Federal Register, June 24, 2004 (Fed. Reg. Vol. 69, pages 34502-34532)**

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I. REQUEST FOR EXTENSION OF THE COMMENT PERIOD

While we appreciate the two-week extension on the comment period provided by NRCS, this very short extension period does not meet the fundamental needs underlying our original request for a 60-day extension of the comment period. We requested an additional 60 days for the comment period in order to allow the time necessary for an adequate evaluation of the CSP's first sign-up by the NRCS as well as organizations, including SAC member organizations, which worked with farmers and ranchers during the sign-up period. During the week of September 20, in response to our request and those of our member organizations for information on the first CSP sign-up, we were told by NRCS State Conservationists and NRCS headquarters that much of the information on the results of the first sign-up was embargoed and would be put onto NRCS state websites as it became available. On September 28, we found that some information about the results of the first CSP sign-up had been posted on only a few websites.

In the announcement of the public comment period for the CSP Interim Final Rule (IFR), NRCS asked for responses to numerous issues related to the first CSP sign-up but now we find that NRCS has not released information to the public in the timely fashion necessary for fully informed public comment. We also understand that NRCS has not yet held its own internal evaluation meeting on the results of the first CSP sign-up.

In addition, as we noted in our letter of July 12, 2004 to USDA Secretary Veneman requesting a 60-day extension, most farmers and ranchers are fully engaged with their operations in late summer and early fall and will have little opportunity, until later in the autumn, to prepare their own comments or provide information for a thorough review of CSP implementation from the most important perspective, that of farmers and ranchers who are already undertaking good conservation work on their operations or seeking to make significant improvements.

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II. MAJOR COMMENTS ON PROGRAM DESIGN

A. Provide for a Nationwide CSP Signup Process that is Continuous, Transparent, and Predictable

Recommendation: The CSP rule should provide for a predictable, transparent, continuous, nationwide signup process.

The CSP Interim Final Rule (IFR) envisions infrequent, limited duration CSP enrollment periods, rather than the continuous sign-up process envisioned during congressional debate on the 2002 Farm Bill. This process could make it difficult for farmers and ranchers to sign-up when a limited period falls within planting and growing seasons. A continuous sign-up process would also spread the demand for NRCS technical assistance across the course of a full year, in contrast to short-term, periodic sign-ups that concentrate demands and increase pressure on NRCS staff. A “stop-and-go” CSP is also vulnerable to political manipulation.

Without a funding cap, there is no valid reason for administering the CSP with limited, restricted sign-ups. But, even with a funding cap, the CSP should function in the same manner as the capped EQIP program, with a continuous application process and periodic selection of program participants.

B. Remove Limiting Provisions that Are Contrary to Law: Provide for a Nationwide CSP and Remove All References in the CSP Rule to Program Limitations on a Watershed Basis

Recommendation: The CSP rule should be modified by removing all references to priority watersheds and to limiting enrollment opportunities to producers in certain watersheds. The CSP should be a nationwide program available to all types of farmers and ranchers in all regions of the country who are practicing effective conservation and solving various combinations of critical resource concerns and conservation objectives, as provided for in the 2002 Farm Bill.

In the CSP IFR, NRCS seeks comment on whether to establish within the CSP rule for FY2005 and beyond, the process of limiting the scope of the CSP by prioritizing watersheds. See IFR § 1469.6(a). NRCS proposes to select watersheds, announced in each discrete CSP sign-up notice, and limit land eligibility in each sign-up by requiring that the majority of the agricultural operation of a farmer or rancher must be within the watershed restrictions announced in the signup notice. IFR § 1469.5(d)(1)(vi).

This watershed limitation process suffers from a major legal barrier. The CSP is not a watershed program. The watershed approach for program eligibility was not an idea ever contemplated with respect to the CSP until the rulemaking stage. Indeed, to the contrary, the statutory design of the CSP makes eligibility dependent on the Secretary’s approval of a producer’s conservation plan that meets the statutory requirements of land eligible for the program.¹ The CSP legislation for eligible land provides that private agricultural land, land under the jurisdiction of an Indian tribe, and forested land that is an incidental part of an agricultural operation “. . . shall be eligible for

¹ 16 U.S.C. § 3838a(b)(1)

*enrollment in the conservation security program.*² The legislation further provides for four limited and specific exclusions from land eligibility, none of which has any reference to watershed prioritization, selection, or exclusion.³

Moreover, the legislative history of the CSP is replete with references to the CSP being a nationwide program for working land conservation, open on a voluntary basis to any farmer or rancher in any region of any state who is practicing effective conservation. The watershed approach to limiting program eligibility in the IFR is contrary to the law, and will result in vastly lower participation levels, far less progress in solving natural resource problems, and a significant avenue for politicizing the program.

The CSP does include explicit and implicit references to watersheds in the enhanced payments provisions. The enhanced payment provision requires that the USDA Secretary determine enhanced payments “ . . . *in manner that ensures equity across the regions of the United States . . .*” if a producer addresses local conservation priorities in addition to resources of concern for the agricultural operation (which in many states includes watershed priorities) or if a producer participates in a watershed or regional resource conservation plan that involves at least 75 percent of producers in a targeted area.⁴ Note that this provision does not in any way approve using watersheds as a discriminatory tool to limit farmer and rancher participation in the CSP; indeed, it calls upon the USDA Secretary to avoid such discrimination. In addition, by linking the enhanced payments for watershed related activity to a recognized local priority or watershed planning process, Congress intended to target CSP funding to ensure effective conservation measures in a coordinated fashion with other state and local resources for watershed improvement. This is in strong contrast to the IFR which provides for a sign-up notice process that gives little predictability of the possibility of CSP funding in any given watershed, in any given year. Therefore, the watershed restriction in the IFR serves as a barrier to the promotion of watershed planning and coordination of CSP funds with state and local funds and initiatives, in direct contradiction to the statutory provision for enhanced payments.

The imposition of the unauthorized restricted watershed approach on the CSP is particularly ironic given the Administration’s decision just a year ago in developing and finalizing the rule for the Environmental Quality Incentives Program to eliminate all traces of targeting to priority watershed areas -- a key feature of the program prior to 2002 -- despite a minimal statutory language change in the 2002 Farm Bill. As NRCS knows, EQIP, inheriting the mantle of the earlier Water Quality Incentives Program, was originally designed to deliver targeted resources to address conservation needs in priority watersheds and related eco-regions. The Coalition played a key role in the development of both WQIP and EQIP. In 2001-2, we also proposed a continued targeted role for EQIP in light of congressional consideration of the new CSP proposal and its much broader reach and higher eligibility criteria.

The now final EQIP rule has effectively taken a watershed program and turned it into a nationwide program, while the CSP IFR takes a nationwide, comprehensive program and tries to

² 16 U.S.C. § 3838a(b)(2).

³ 16 U.S.C. § 3838(b)(3).

⁴ 16 U.S.C. § 3838c(b)(1)(C)(iii)(II) and (IV)(Tier I); § 3838c(b)(1)(D)(iii)(Tier II); and § 3838c(b)(1)(E)(iii)(Tier III).

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turn it into a watershed program. Whatever the merits or demerits of the final EQIP rule from this standpoint, the administrative decision to radically change EQIP is not a valid excuse to then turn the tables on the CSP. Our viewpoint on the scope of the CSP is in keeping with the recommendation of the recent report of the Soil & Water Conservation Society, *Realizing the Promise of the Farm Security and Rural Investment Act of 2002*, that the administration should quickly and thoughtfully ramp-up CSP in a way that emphasizes the program's unique feature and integrates CSP into the conservation program portfolio *as the primary source of financial assistance for a base conservation effort.*⁵

A further irony in the decision to propose that the CSP be targeted to select watersheds is that NRCS has the perfect tool to focus a full array of farm bill conservation resources on watersheds – the Partnerships and Cooperation provision (Section 2003) of the 2002 Farm Bill.⁶ This initiative calls for collaborative special projects using resources from any or all of the available conservation incentive programs. One of the purposes of the Partnerships and Cooperation Initiative is to encourage cumulative conservation benefits in specific geographic areas.⁷ Unfortunately, this new authority has yet to be implemented. NRCS should implement this provision of the Farm Bill without further delay, and focus some of the special projects and incentives on particular priority watersheds.

C. Remove Limiting Provisions that Are Contrary to Law: Remove from the CSP Rule All Provisions Limiting Participation to Special Categories of Producers

***Recommendation:* The CSP rule should be modified by removing all references to limiting enrollment opportunities to certain “categories” of producers. The CSP should be a nationwide program available to all types of producers in all regions of the country who are practicing effective conservation and solving various combinations of critical resource concerns and conservation objectives, as provided for in the 2002 Farm Bill.**

The CSP IFR limits CSP eligibility to particular, unspecified “categories” and “subcategories” of farmers and ranchers. IFR § 1469.6(b). This limitation is unsupported by the clear language of the statute. Eligible producers are clearly defined by the law. To participate in the CSP, eligible producers must meet the statutory requirements of the program, including the minimum requirements for each tier determined and approved by the Secretary.⁸ The Secretary has the authority to set reasonable environmental thresholds for participation in each tier but does not have the authority to make otherwise eligible producers ineligible based on selection categories unrelated to the tiers.

Moreover, the statute clearly and unambiguously states that “the Secretary shall not use competitive bidding or any similar procedure” as an enrollment procedure.⁹ The Statement of

⁵ Soil & Water Conservation Society, *Realizing the Promise of the Farm Security and Rural Investment Act of 2002* at p. 6 (2004).

⁶ 16 U.S.C. § 3843(f)

⁷ 16 U.S.C. § 3843(f)(2)

⁸ 16 U.S.C. § 3838a(d)(6)

⁹ 16 U.S.C. § 3838c(f)

the Managers elaborates that “*the Secretary will not employ an environmental bidding or ranking system in implementing CSP and should approve a producer’s contract that meets the standards of the program.*”¹⁰ The CSP IFR, on the other hand, defines “enrollment categories” – a term never used in the statute – as “*a classification system...used to sort out applications...*” (*emphasis added*). IFR § 1469.3. In its discussion of enrollment categories in the prefatory material to the CSP IFR, NRCS continues to further characterize enrollment categories as “*intended to identify and prioritize eligible producers...for funding*” (*emphasis added*).¹¹ Clearly, sorting out, classifying, and prioritizing applications in this fashion is precisely the type of ranking system prohibited by the statute.

In addition to the most the significant point, that we object to enrollment categories as contrary to the CSP statute, the first CSP sign-up illustrates the administrative problems arising from the NRCS process of using enrollment categories that are undefined by the CSP rule. The enrollment categories were announced in a notice issued May 4, 2004, with little time for public review and no organized approach for public comment. The categories were basically developed in a top down process, with a “one-size-fits all” approach that for crops focused on monocultures or simple rotational systems, with assumptions about climatic and soil conditions that are not appropriate for many regions. Overall, the enrollment categories paid little attention to the wide diversity of agricultural operations, soil conditions, climatic conditions and other variables in the nationwide area that the CSP is intended to serve.

Moreover, to further confuse the issue, the enrollment categories were announced more than a month in advance of the June 21, 2004 selection of the watersheds eligible for CSP participation in FY2004. Meaningful and comprehensive comment on enrollment category criteria was very difficult without knowing where the categories would be applied. In addition, the watershed selection announcement plus additional enrollment categories were announced only 2 weeks before the first CSP sign-up period commenced. This short notice period, close on the heels of the sign-up period, gave farmers and ranchers little time to assess their operations in light of eleventh hour program decisions. The short notice period, coupled with a lack of process for NRCS to receive feedback on the categories, does not represent a good faith attempt by NRCS to receive informed and timely public comment on fundamental components of CSP implementation.

Even with a longer notice period before sign-up commences, this process of multiple rounds of notice and comment periods increases confusion and uncertainty about CSP participation among farmers and ranchers, who cannot determine in a timely or predictable manner whether they will even be eligible to apply for the CSP in any given year. Contrary to the assertion of NRCS that these limitations provide for effective and orderly implementation of CSP, this confused, complex, ad-hoc, on-the-fly process for CSP implementation discourages program participation and undercuts the potential of CSP to be, as Congress intended, a widely used program for comprehensive and effective conservation on agricultural working lands.

Finally, we note that the NRCS exercise of elaborating watershed restrictions and the complicated schemes of categories and subcategories begins in the CSP IFR with the NRCS

¹⁰ H. Rpt. 107-424, page 478

¹¹ 69 Fed. Reg.34506 (2004)

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Chief “ . . . determining fund availability to provide financial and technical assistance to participants according to the purpose of and projected costs 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.” IFR, § 1469.2(b). This exercise is imbued with assumptions that fly in the face of the CSP statute. This approach does not meet the statutory goal of establishing a CSP as a program open to all farmers and ranchers willing to practice effective conservation, with a clear goal of providing rewards and incentives to those who reach the highest tiers of enhanced conservation performance on their agricultural operations. Instead, this approach requires micro-management of contract purposes and program eligibility for each sign-up period, with categorization schemes, unsupported by sound conservation science, to limit the program demand. No other USDA conservation program is administered in this manner to pre-set program demand and gauge success in the program by the extent to which farmers and ranchers are discouraged from applying by complicated, unpredictable, and arbitrary restrictions.

D. Remove limiting provisions that are contrary to law: Remove the per acre contract payment limitation on combined stewardship, existing practice, and enhancement payments which is based on a percentage of the acreage rental rate times the number of acres enrolled in the CSP.

***Recommendation:* We urge NRCS to remove from the CSP rule and cease in any future CSP sign-up, the per acre payment limit on combined stewardship, existing practice and enhancement payments that is based on a percentage of the acreage rental rate times the number of acres enrolled in the CSP. IFR § 1469.23(e)(5). This limitation introduces an arbitrary inequity in the CSP in favor of large-scale operations and operations with high rental rates in relation to small and mid-sized farms and ranches, and farms and ranches on land with lower rental rates, whose operators are willing to do much more comprehensive and effective conservation measures under the CSP. It places arbitrary and counterproductive limits on environmental enhancements that could be achieved by the program.**

In the CSP IFR, NRCS inserted a provision that imposes a cap on the combined stewardship, existing practice, and enhancement payments based on a percentage of the acreage rental rate times the total number of acres enrolled in the CSP. IFR § 1469.23(e)(5). This limitation on the CSP contract payments acts as a “per acre” payment cap that discriminates against farmers and ranchers with smaller acreages who are doing more conservation management and practices in favor of large operators who can get higher overall CSP payments for doing less on more acreage. Because the cap is based on a percentage of the acreage’s rental rate, the cap also allows higher payments to farmers and ranchers with higher rental rates, even if farmers and ranchers with lower rental rates are willing to do much more conservation work on their land. **The per acre contract limitation, along with the equally arbitrary 50% cap on the ratio of enhancement payments to total payments, caps the environmental enhancement portion of the program, defeating a major program objective.**

This arbitrary limitation on all combined CSP payments is contrary to the CSP statutory authority on payment limitations. No where does the CSP provide for a total per acre payment

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limitation based on a percentage of acreage rental rate and total number of acres enrolled in the CSP that discriminates against agricultural operations based on their size. In applying this limit to enhanced payments, the limitation directly contradicts the statutory provision that enhanced payments be determined in a manner that “ensures equity across regions of the nation.”¹² The per acre formula clearly discriminates among regions, giving farms and ranches in areas with higher rental rates and higher average acreage the potential for much higher enhanced payments. In addition, there is no provision in the statute for basing enhanced payments on per acre rental rates. There is also no statutory authority for imposing on cost-share payments a discriminatory limit based on the rental rate times the number of acres. Only the base payment provides for a payment based on rental rates and number of acres.

By including this “per acre” cap on all combined CSP payments, NRCS has arbitrarily contradicted the carefully crafted legislative balance among the different types of CSP payments, which was intended to ensure balance and greater equity between larger operators doing some conservation work on many acres in relation to small and mid-sized farmers and ranchers doing much more comprehensive conservation on large numbers of smaller acreages. With its “per acre” cap, NRCS ensures that greater amounts of conservation money will flow to larger operations on more expensive land doing less to provide the public with comprehensive conservation benefits.

In addition to finding that this “per acre” cap is not legally valid under the CSP statute, we also find that the “per acre” cap as imposed in the first CSP sign-up is legally invalid as a matter of administrative procedure. The CSP IFR provides that the NRCS Chief may limit stewardship, practice, and enhancement payment 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.” IFR § 1469.23(g). We have closely read the June 21, 2004 NRCS notice of the first CSP sign-up which includes the “per acre” limitation on combined payments.¹³ We find no indication in that sign-up notice of “targeted activities and conservation benefits” identified by the NRCS Chief that will result from the discriminatory “per acre” limit, an identification required by the CSP IFR.

E. Administrative Adjustments to the CSP to Deal with Potential Funding Caps Must Be Based on Factors Authorized in the CSP Statute and Not on Unauthorized, Arbitrary Administrative Limitations

Recommendation: In case of a funding cap on any subsequent CSP sign-ups, we recommend that NRCS accept applications in order of tiers and enhancement factors, with priority going to whole farm, total resource management plans with a variety of enhancement factors.

In the prefatory comments to the CSP IFR, NRCS notes that it is requesting public comments on the *processes* for establishment of priority watersheds and the enrollment categories for use in administering the CSP for FY2005 and future years.¹⁴ As we have made clear in the previous

¹² 7 U.S.C. § 3838c(b)(1)(C)(iii).

¹³ 69 Fed. Reg. at p.34535 (2004).

¹⁴ 69 Fed. Reg. at p.34502 (2004).

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sections of these comments, these limitations are contrary to the law, regardless of the processes for establishing them. The prefatory comments to the proposed rule make clear that the entire reason for proceeding down this path of ranking applications in direct contradiction to the law is due to the “cap” placed on this conservation entitlement program by the FY2003 appropriations act. Under the most recently permanently enacted appropriations legislation, the FY2004 Consolidated Appropriations, this cap has been removed, and the enrollment categories should be removed as well. Even if there were either an annual cap or a total program cap placed on the program in the future, neither the watershed restriction nor the enrollment category restriction are allowable under the law.

While we are strongly opposed to a program funding cap, were one to occur, the reasonable and valid response is clear. Rather than inventing a completely new (and prohibited) mechanism, the agency should use the structure the statute already provides in the program’s tiered structure and enhancement factors. It is our hope that all eligible producers in all tiers will be able to participate because the cap placed on the CSP in 2003 is permanently lifted in FY2005 appropriations. If that should turn out not to be the case, then the agency should admit new Tier 3 applicants first, followed by Tier 2 applicants, and then Tier 1 applicants. A tier system for enrollment could be further refined, as necessary, by moving to the statutory enhancement factors, with applicants within a tier with the greater number of enhancements being enrolled prior to those with fewer.

This system for enrollment under a capped situation is integrally built upon the foundations of the law and would advance a key objective of the law - that the Secretary assist producers “*in developing a comprehensive, long-term strategy for improving and maintaining all natural resources of the agricultural operation of the producer*”.¹⁵ This statutory objective is what the agency has traditionally referred to as whole farm, total resource management planning and what the program refers to as Tier 3 plans. Again, while we would strongly oppose the re-imposition of a cap, if one were to occur, we recommend that whole farm, total resource management plans with a variety of enhancement factors be first in line.

This approach to financial constraints on program participation would also allow for greater certainty in program eligibility. The underlying process would remain the same throughout the life of the CSP and would not be subject to administrative tinkering, manipulative geographic limitations, and complex and confusing NRCS ranking category schemes designed in contradiction to statutory authorization.

In the preamble to the CSP IFR, NRCS rejected the proposal that in times of less than full funding higher CSP tiers be given priority over lower tiers. The grounds for the rejection were that CSP requires NRCS to offer all three tiers for CSP participation and that the statute provides no explicit authority for prioritizing one tier over another.¹⁶ This reasoning is both faulty and disingenuous. First, the fact that the statute requires NRCS to offer all three tiers for CSP participation is no barrier to limiting program participation in one or more tiers during times of less than full funding. NRCS has established the three program tiers and under our proposal would continue to offer them throughout the life of the program. CSP applications for all three

¹⁵ 16 U.S.C. § 3838a(c)(2)

¹⁶ 69 Fed. Reg. at p. 34504 (2004).

tiers would be accepted as funding allowed. Second, CSP tiers are clearly provided for in the statute. As noted above, the statute also makes it clear the overriding objective of the program is to promote comprehensive, total resource, tier 3 approach, which establishes a strong preference for tier 3 enrollments. It is disingenuous for NRCS to reject a process that relies on statutorily authorized tiers and enhancement payments, while at the same time using arbitrary limitations based on watershed restrictions and a complicated suite of categories and subcategories that are not provided for in the statute and that are actually contrary to the CSP statute.

Even more egregious is the NRCS position in the CFR IFR, that even with uncapped and full funding, NRCS intends to administer the program with these unauthorized limitations for every CSP sign up period. Even if any long-term cap is put on the CSP, we recommend that the program accept applications in order of tier and enhancement factors, a process that provides clarity for farmers and ranchers about the CSP application process and goals and that relies on factors expressly authorized in the statute.

In addition, we reiterate our position in our comments on the CSP proposed rule that if further attempts to cap the program are thwarted, budget control should be accomplished by running a program with integrity, including a high conservation and environmental bar for entry and a comprehensive conservation planning and implementation basis for participation in the program, not through arbitrary and capricious limitations and restrictions. As we noted in our comments on the advanced notice of proposed rulemaking, there are many elements of the CSP statute which, when properly followed and incorporated into the rule, manual, and on-the-ground implementation will provide effective cost control:

“CSP implementation should be guided by a commitment to holistic resource management and an integrated agricultural and conservation systems approach. There are a number of other aspects of the CSP statute and report that allow the program to maintain these high standards, including language:

- *requiring that least cost alternatives be pursued;*
- *providing enhanced payments for resource-conserving crop rotations, managed rotational grazing, and other outstanding sustainable farming systems yielding multiple benefits;*
- *prohibiting payments for basic conservation compliance measures on highly erodible cropland where already required by law;*
- *prohibiting payment on newly broken out cropland;*
- *prohibiting payments for equipment and nonland-based structures unless they are an integral part of the conservation system and essential to achieving the conservation purposes of the plan; and*
- *prohibiting payments for animal waste storage and related structures and transport or transfer devices for animal feeding operations.”¹⁷*

“The law does not prescribe a dollar or acreage cap because the CSP is a conservation entitlement program. The absence of a cap was not some mysterious oversight in the drafting or

¹⁷ Sustainable Agriculture Coalition Comments on CSP ANPR, page 6 (2003)

legislative process. It was a centerpiece of the program from day one right through to final passage and bill signing. It was an aspect of the program that was discussed, debated, challenged, and ultimately endorsed as part of the final farm bill deal. Therefore, USDA must use the conservation requirements of the program as the only limiting factor. Every farmer or rancher who agrees to an approved conservation security plan must be enrolled.

In this light, it is extremely important to remember key elements of the program:

- The CSP is the first USDA conservation program to require, by law, that participants achieve resource management system quality criteria for resources of concern and, at the highest tier, a full resource management system.
- The CSP has the strongest environmental screening criteria compared to any similar program that has come before it, and the Department can improve these criteria dramatically by accelerating movement toward performance-based measures and by adopting our recommendations for minimum requirements.
- The CSP correctly emphasizes management practices and a systems approach, which also help maximize conservation and cost-effectiveness.
- The CSP limits assistance per farm with tight, loophole-free payment limitations, and, unlike some other USDA conservation programs, prohibits payments for high cost animal waste structures and equipment for CAFOs.
- The Department can take additional steps to maximize conservation and limit budget exposure by developing a sound means of establishing resources of concern, requiring conservation practices to be implemented to a degree and on a sufficient portion of the agricultural operation to contribute significantly to the overall environmental performance of the operation, and requiring participants to address at least two resources of concern and emphasize diversified, resource conserving crop rotation and other high impact, high pay-off conservation farming systems at the tier II level.
- The Department could also consider utilizing a streamlined, farmer-friendly mechanism to allow EQIP participants to develop an approved conservation security plan and enroll in CSP, retaining the EQIP cost-share for those new practices but adding CSP payments as appropriate for base, additional new practices, maintenance, and enhanced payments.¹⁸

F. The CSP Rule Should Include Reasonable, Minimum Conservation Requirements for Program Entry Coupled with High Environmental Standards as CSP Contract Requirements.

Recommendation: Set the entry requirements for CSP eligibility reasonably high and retain the highest environmental standards as CSP contract goals, rather than preventing farmers and ranchers who do not meet the highest high soil and water quality criteria at the time of applying for the CSP from participating in the

¹⁸ Sustainable Agriculture Coalition Comments on the CSP ANPR, page 19-20 (2003)

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program. USDA should require that CSP conservation plans and contracts provide that the participant will meet these high soil and water quality criteria within a reasonable period.

In all its conservation planning assistance and its conservation cost-share and incentive programs to date, NRCS has held up the Resource Management System quality criteria as the ultimate goal and the top of the line conservation systems. It is obvious from the CSP IFR and the prefatory comments that the agency is seriously reconsidering this position. Over the long-term, we think this may well be an important turn for the agency and its conservation mission. This is a welcome change, especially given the agency's misguided decision in the most recent EQIP rule to remove even the relatively weak reference to conservation planning requirements and the Resource Management System quality criteria from the 1996 version of the rule. While we welcome the reconsideration, we believe the agency has more than a little explaining to do to justify the radically different approaches and objectives between its high standards approach to CSP and its "anything goes" approach to EQIP. It would be our hope that upon finalization of the CSP rule, the agency would return to the EQIP rule and amend it to bring some coherence and at least mild conformity to its basic infrastructure and positions.

Despite our support for the recent efforts to improve the quality criteria and consider increased management intensity, we nonetheless believe the IFR sets the entry point for the CSP too high. According to the IFR, the highest NRCS conservation standards for soil and water quality would have to be achieved *prior to* becoming eligible for the CSP. This is in stark contrast to the law, which says that relevant conservation standards must be met *as a result of* participation in the CSP. For Tier 3 participants the proposal is even more draconian. The IFR requires that every NRCS conservation standard has to be met prior to enrollment for Tier 3 participants, except for three specific criteria for soil quality, water quantity, and wildlife. We approve of these three exceptions but are concerned that the high bar presented by the other eligibility criteria restricts CSP access to only those farmers and ranchers who have already addressed all their major conservation needs to what has heretofore been the NRCS top drawer level, and deny access to those transitioning to sustainable agriculture. This is short sighted and not in keeping with the CSP statute or the agency's best tradition of conservation planning.

We strongly concur with the statutory requirement that all CSP plans result in reaching all applicable quality criteria within the first contract period for any given resource(s) of concern.¹⁹ In many instances, we believe the quality criteria can be achieved in the initial years of the long-term contract period. However, we strongly oppose requiring all quality criteria to have been achieved before becoming eligible to enroll, and note this proposed requirement is in direct contradiction to the law. This very high bar to program eligibility may eliminate from the program numerous farmers and ranchers who could achieve these high standards with cost effective practices and systems in a relatively short time. For example, the minimum level on treatment on pastureland and rangeland for Tier 1 and Tier 2 is vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance, proper livestock distribution, and timing of use and managing livestock access to water courses. IFR § 1469.5(e)(3). There may be numerous grazers who could reach this level within a year or two with cost-share for moveable fencing, the establishment of riparian buffers,

¹⁹ 16 U.S.C. § 3838a(d)(5)

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and in-field water systems for their livestock and could then implement wildlife management measures, higher levels of soil health, and various enhancement factors going far beyond the minimum standards. But the initial costs of making the system changes necessary to enter the CSP may be too big a burden, especially if NRCS continues with its process of limited watershed selection and other add-on limitations to program participation.

We do believe the program should have a minimum bar for eligibility. The statute provides general authority for a minimum bar through its provision for minimum requirements: "*The minimum requirements for each tier of conservation contracts implemented under paragraph (5) shall be determined and approved by the Secretary.*"²⁰

We concur in part with the decision made as part of the CSP proposed rule to require land eligible for the CSP to be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR Part 12.²¹ As a program to reward good stewardship and plan to reach or exceed the RMS quality criteria, we recommend the rule be strengthened on this point to require HEL compliance at the soil loss tolerance level or below. Whatever rationale, legitimate or illegitimate, there may have been for alternative conservation systems (ACS) in the implementation of conservation compliance, in the context of the CSP we believe that exceptions to the rule should not be allowed.

Beyond compliance, we recommend that instead of requiring prior compliance with each and every applicable quality criteria, the rule adopt a set of minimum standards that makes those producers who have not adopted even first level conservation activities and objectives undertake conservation measures before being eligible for the CSP. The minimum eligibility criteria should include the major production management categories: soil management, nutrient management, pest management, water management, and animal management. For instance, the rule could adopt some or all of the following basic conservation measures as minimum eligibility requirements, as applicable to the particular type of agricultural operation:

- Erosion control to the soil loss tolerance level on highly erodible (see above) and non-highly erodible land.
- Soil testing, and nutrient application balance does not exceed plant uptake over the life of the rotation minus the available nutrients from legume contributions.
- Field scouting, and no use of pesticides with high hazard rating applied on soil with high leaching potential.
- Irrigation system more efficient than gravity irrigation with tile drainage or gravity irrigation without tailwater recovery.
- Animal stocking rates at or below carrying capacity.

Adoption of a set of basic first level conservation eligibility standards along the lines of the suggestions above would serve the program well by ensuring that those who have yet to make a basic commitment to conservation are not placed in a position of disrupting the program where there is little likelihood of achieving or exceeding the quality criteria during the initial contract

²⁰ 16 U.S.C. § 3838a(d)(6)

²¹ 69 Fed. Reg. 217 (2004)

period. Beyond that initial threshold, the key to implementing an effective program will rest with the proper selection of resource concerns to be addressed and the quality of the conservation plan to reach and exceed the quality criteria for those concerns. Again, the conservation and environmental requirements of the CSP conservation plan far exceed those of any previous federal conservation incentive program, a position for which we strongly advocated. The agency should concentrate on delivering the program with these high standards rather than proposing in the alternative that the program only serve those who have already achieved each and every agency standard.

We also note that if the CSP should face funding caps, those farmers and ranchers in the highest tiers with the most enhancement factors in their conservation plans should have priority over lower tiers with less enhancement factors. This priority will ensure that the CSP gives primacy to its first goal of rewarding the best for their past efforts and current status as leaders and demonstrators for other farmers and ranchers of a high level of conservation performance.

G. Retain the Primary Role for Conservation Planning Provided in the CSP IFR.

Recommendation: Retain and implement the provisions in the CSP IFR that give the CSP conservation plan an integral role in the determination of eligibility, acceptance, and payment rates as well as the determination of practices and enhancements included in the CSP contract.

We appreciate the revisions to the CSP proposed rule that NRCS included in the CSP IFR which restored an integral role for CSP conservation planning in the determination of eligibility, acceptance, and payment rates as well as the determination of practices and enhancements included in the CSP contract. We recommend that NRCS retain in the CSP rule the provision that contract applications include both the benchmark inventory *and the conservation stewardship plan*. IFR § 1469.20. This is a major improvement over the CSP proposed rule under which NRCS would have determined program eligibility and placed applications in enrollment categories before the development of a CSP conservation plan. Conservation planning lies at the heart of the CSP. An important component of the CSP to introduce all applicants to basic conservation planning, even those who may not be determined to be eligible for the program during any given sign-up. Information and conservation plans generated by unsuccessful applicants can be used by the applicants as the basis for reapplying for the CSP in subsequent years with a better, more detailed understanding of their agricultural operations, the relevant resources of concern, and conservation practices in sustainable farming systems that may be used to meet environmental quality standards for the resources of concern.

Having expressed our approval the CSP IFR requirements for conservation planning before CSP applications are accepted for the program, we must now question whether this process was actually followed by NRCS in the first CSP sign-up, which by law should have conformed with the CSP IFR. We have heard from our organizations that provided assistance to farmers and ranchers in the first CSP sign-up that NRCS ignored the CSP IFR procedures. Instead, farmers and ranchers did self-assessments and were interviewed by NRCS staff, contracts were accepted and then conservation planning undertaken, if there was any conservation planning at all. We would appreciate NRCS confirming whether this preliminary information on the first sign-up is

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correct. If it is, we assume that the agency will provide an explanation of why it did not follow its own regulations and describe the basis for determining what exactly went into CSP contracts and what role, if any, CSP conservation plans will play in future sign-ups.

We acknowledge that moving CSP planning to the forefront of the application process does make greater demands on NRCS staff than a process of simple screening to eliminate applicants without actively engaging them in conservation planning. We appreciate the need for a screening process such as the farmer-rancher self-assessment and the preparation of a benchmark inventory. These steps both facilitate the conservation planning process and help identify early in the conservation planning process those applicants unlikely to qualify for the program or follow through on a CSP contract. Our member organizations plan to continue their work with farmers and ranchers in assessing the materials involved with these steps and working with NRCS in making any necessary improvements.

As we have noted above, the NRCS could help alleviate logjams in the CSP application process by dropping the limited time periods for taking CSP applications, which creates these logjams in the application process and results in periodic peak demands on staff time that are unnecessarily high. We recommend that NRCS retain the prime role for conservation planning combined with a year-round acceptance of CSP applications. If the program should have funding caps imposed, NRCS could assist with conservation planning and take applications for CSP contracts meeting statutory eligibility requirements year round but provide discrete periods for selecting contracts for acceptance into the program.

III. MAJOR COMMENTS ON PAYMENT STRUCTURE & LIMITATIONS

A. Comments on Provisions Affecting All CSP Payment Components

1. Recommendation: Remove from the CSP rule the blanket authority granted to the NRCS Chief to further limit CSP payment rates in any given sign up period.

The CSP IFR provides that the NRCS Chief may reduce the payment rates for existing practices, new practices, and enhancement payments during any given sign-up notice. IFR, §§ 1469.23(b)(7); 1469.23(c)(9); and 1469.23(d)(6). This process has a number of significant flaws and is just plain bad policy for program administration.

First, frequent, short-term changes in payment rates are confusing to potential program participants and interfere with the development of sound, comprehensive CSP conservation plans. Farmers and ranchers should have sufficient time to develop CSP conservation plans that consider how the production components of their agricultural operations affect the resource concerns to be addressed in a CSP conservation plan *in light of CSP program rewards and incentives*. Rather than establishing a process with short-term variation based on arbitrary top-down limits on these payments, NRCS should try to maximize the certainty of the program's financial incentives and rewards.

Second, over time, this process will lead to significant differences in program contract payments for farmers and ranchers doing the same type and intensity of conservation activity. This process

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of change in payment rates, therefore, builds individual disparities and inequities into the program, which is clearly not sound administrative design of any program.

Third, this micro-management of payment rates from the national level is part of NRCS strategy to “pre-set” program demand and dampen the interest and support for the program among agricultural producers, based on an assumption of varying program funding caps over the lifetime of the program. As we have discussed in detail in previous sections of these comments, if the CSP is subject to funding caps, a better approach would be to give priority to CSP applications based on tiers and enhancement practices, rather than unpredictable, short-term changes to payment rates.

There is also a significant advantage to NRCS in maintaining consistent payment rates over time, even if CSP is capped from year-to-year. The statutory mandate for CSP is that it be operated as a nationwide program open to all farmers and ranchers. NRCS should comply with that mandate and with our recommendation to use tiers and enhancement factors to prioritize the selection of contracts if the program is capped in any given year. Under this process, farmers and ranchers not selected in any given year because of a funding cap may reapply in subsequent years based on essentially the same conservation plan. This approach would give farmers and ranchers more incentive to engage actively in sound conservation planning than continuous, unpredictable manipulation of the underlying program components such as payment limitations.

2. Recommendation: Amend the CSP rule to incorporate the statutory requirement for direct attribution of payments.

The law requires direct attribution of CSP payments back to the individual or entity.²² CSP payments are attributed directly to real persons regardless of the type or number of business entities, farms, locations or any other factor. The intent of Congress is clear that whichever tier a producer will fit within, there are specific payment limitations they cannot exceed. After extensive debate, the CSP was passed by Congress and signed by the President with strong limits on the payments any one producer can receive from the program -- \$20,000 (of which not more than \$5,000 may consist of base payments) for those enrolled at Tier 1, \$35,000 (of which not more than \$10,500 may consist of base payments) for those enrolled at Tier 2, and \$45,000 (of which not more than \$13,500 may consist of base payments) for those enrolled at Tier 3. USDA must implement the CSP to clearly require that the direct attribution requirement is met.

We included this recommendation in our comments on the CSP proposed rule and are amazed to see that NRCS continues to ignore this statutory requirement, without even a word in the prefatory comments to the CSP IFR. The NRCS view may be that this provision is “self-executing” as a matter of law, but the agency knows well that as a matter of sound program administration a measure such as the direct attribution requirement needs to be clearly defined in the regulation, accompanied by clear enforcement provisions. Indeed, the CSP statutory provision is equivalent to the one found in the EQIP statute, for which NRCS has provide a direct attribution requirement and enforcement mechanism in the final EQIP rule.²³ There is no justification for different treatment of the same provision as it affects these two rulemakings.

²² 16 U.S.C. § 3838c(b)(2)

²³ 7 C.F.R. § 1466.24 (a) and (b)(3).

This oversight must be corrected and the CSP rule amended to include direct attribution provisions. It is quite important that the regulations, program manual, and all other CSP implementing guidance materials clearly and strictly follow the law and the legislative history concerning payment limits and direct attribution of all payments to real persons. This is critical both to the program's integrity, to controlling the program cost, and to providing clear information to farmers and ranchers throughout the program's implementation.

3. Recommendation: Expressly incorporate into the CSP rule for all payments, the statutory prohibition on payments for animal waste storage and treatment; the purchase or maintenance of equipment, and other non-land based structures, which in the CSP IFR is provided in its entirety only in the new practice payment subsection.

In the CSP IFR provision addressing payments for new practice payments, NRCS has included a regulatory provision that incorporates the statutory prohibition on CSP payments being made for: (i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; (ii) The purchase or maintenance of equipment; or (iii) A non-land based structure that is not integral to a land based practice, as determined by the Chief. IFR § 1469.23(c)(3). The statutory restriction, however, reads that *no CSP payment of any kind* shall be made for these purposes.²⁴ The inclusion of this statutory prohibition within the CSP IFR section that addresses only new practice payments is confusing in that implies that the restriction does not apply to other CSP payment components. In addition, the CSP IFR provisions for existing practice payments includes a prohibition only on the payment for the maintenance of equipment but not the other statutory limits, thus implying that payments can be made for animal waste storage and treatment facilities or associated water transport or transfer devices for animal feeding operations or for other non-land based structures. CSP IFR § 1469.23(b)(3).

This basic error in the drafting of the regulation should be corrected. We agree that this statutory prohibition should be expressly provided for in the CSP rule. We recommend, therefore, that section 1469.23(b)(3) be deleted from the rule. We further recommend that section 1469.23(c)(3) be deleted from its current location within the rule and reinserted as a new section, 7 C.F.R. § 1469.23(i), where it would apply to all program payments, with revisions to clearly indicate that *no CSP payment* may be made for the prohibited purposes.

4. Recommendation: Include protections for tenants by limiting a crop share landlord's share of the payments to the usual and customary crop shares in the area.

5. Recommendation: For producers, the CSP rule should require that in order to receive CSP payments, the producer should materially participate in the operation on a regular, continuous, and substantial basis, including personal provision of management, labor, and on-site services.

²⁴ 7 U.S.C. §3838c(b)(3).

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6. Recommendation: Allow the tenant farmer or rancher to receive CSP payments on land meeting CSP standards as long as the tenant controls the land. If control is lost, discretionary authority options can be enacted under the rule's contract modification provisions.

We appreciate the removal from the CSP IFR of the provision in the CSP proposed rule that would have required tenant farmers to meet all CSP requirements on an entire parcel of land even where the tenant farmer could only demonstrate control for the life of the contract on a portion of the parcel. Under that provision, the tenant farmer would not have received CSP payments for the portion of the parcel for which the tenant farmer could not demonstrate control.²⁵ This provision would have obviously dissuaded many producers from participating in the program, and in our view was unnecessary.

We recommend that in those cases in which only short term control can be demonstrated, the producer be allowed to participate, with payment, and that if the producer should lose control of the land within the contract period, the underlying contract modifications provisions be brought into play to adjust the contract and payments. The contract modification provisions in the CSP IFR include the discretionary authority for the agency to require the participant to refund part or all of any assistance received, as well as the discretionary authority to require further contract modifications if the change in the type, size, management, or other aspect of the agriculture operation would interfere with achieving the purposes of the CSP contract. IFR § 1469.24(d) and (e). This discretionary authority could be particularly important in the case of certain Tier 1 contracts if the loss of a particular parcel results in enough of a change in scope as to negate a significant portion of the conservation benefit.

As NRCS is aware, a high percentage of agricultural land in the United States is rented and much of this land is rented on a short-term basis. A categorical exclusion of this land from CSP program eligibility will exclude CSP land whose landlords and tenants may be willing to meet CSP requirements over a long period of time but who each wish to retain flexibility in the relationships they enter for farming the land or the configuration of their operations. Our proposed alternative would provide flexibility to modify CSP contracts in increasingly common year-to-year lease situations, provided the modifications are consistent with the purposes of the program.

B. Base (Stewardship) Payment Comments

1. Recommendation: Cease using the term "stewardship payments" to refer to the base payment in the CSP statute.

In the CSP IFR, NRCS has decided to create new terminology for the CSP by dropping the term "base payment" which is provided in the CSP statute and substituting the term "stewardship" payment. IFR § 1469.3. We object to this decision for two reasons. First, it is confusing and irksome for a federal agency, in the middle of program implementation, to substitute its own made-up terms for program components for existing terms which are clearly defined in the statute authorizing the program. Second, we find the term particularly inappropriate in that

²⁵ 69 Fed. Reg. at p. 217 (CSP Proposed Rule § 1469.5(a)(3)(iii)).

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“stewardship” payment is being applied only to the base payment component, which in comparison to the cost-share payment and the enhanced payment, is the program payment that requires the very least conservation performance. In addition, NRCS has devised a “conservation stewardship plan” as a new term for CSP conservation security plans and the new term “conservation stewardship contract” as the new term for the CSP conservation security contract. Calling the base payment the “stewardship” payment implies that it is the major CSP payment, which it certainly is not.

In the prefatory information to the CSP IFR, NRCS indicates it is calling CSP base payments “stewardship” payments in response to one comment that indicated the use of base payment in CSP could be confused with the farm commodity program notion of base acres.²⁶ But the suggested cure for this potential confusion is to engender even more confusion within the CSP itself. We recommend that NRCS cease using the term “stewardship” payment for the base payment and either retain CSP base payment as the term or use a term such as “basic” payment that will avoid confusion among CSP terms.

2. Recommendation: Use regional and local agricultural land valuation as the basis for determining base payments. One possibility is to gear base payments towards land capability class.

We endorse the proposed rule selection of local and regional rates, rather than national rates, for its base payment methodology. However, as we argued in our comments for the Advanced Notice of Proposed Rulemaking, our strong preference would be for you to use agricultural use land valuation rather than cash rental rates as the underlying factor. The combination of using more localized rates and switching to agricultural use land values will greatly improve both regional equity and also equity between types of agriculture. Using agricultural use land valuation rather than market land valuation has the important advantage of discounting the substantial development value that exists in many areas. In using land values, the underlying amount must be divided by an appropriate factor to bring it to a comparable level to those obtained by using cash rents. This is a straightforward computation and the percentage could be included in the proposed rule since base payments will be calculated on 2001 data.

3. Recommendation: Cease using reduction factors for base payment rates and implement the base payment structure as provided in the CSP statute.

The CSP proposed rule set base payments, the basic incentive to sign up for the program and design and maintain conservation practices, equal to 0.5%, 1.0%, or 1.5% of local cash rental rates, depending on tier of participation,²⁷ a 90% reduction from the level established by law.²⁸ We note that in the CSP IFR, NRCS has responded to public comment protesting this absurd reduction factor by substituting less draconian reduction factors of .25 for Tier I, .5 for Tier II, and .75 for Tier III. This is a step in the right direction but the use of these reduction factors is still has problems. The CSP IFR preface states that the NRCS is using reduction factors for base payments to provide incentives for producers to move to higher tiers which will provide

²⁶ 69 Fed. Reg. at p. 34509 (June 21, 2004).

²⁷ § 1469.23(a)(2) and (3)

²⁸ 16 U.S.C. § 3838c(b)

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significantly higher benefits. NRCS also suggest that the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate to the payment scheme. Neither of these rationales is convincing. First, the limits set on the total payment allowable under the base payment component already provides an incentive for producers to move to higher tiers, as does the increased percentage of the per acre stewardship payment that a landowner can receive. Moreover, in many areas of high development pressure, the use of agricultural land rental rates undervalues the actual opportunity cost of land that stays in production.

We urge NRCS to support the base payment structure provided in the CSP legislation, without additional reduction factors, particularly if NRCS continues to use local cash rental rates to calculate base payments. Using reduction factors not only makes the program application and administration more complicated, but eventually will discourage producers from applying. The objective of the CSP is to reward the best. This cannot be achieved by cutting CSP payment levels so low that there are no meaningful incentives for any producers to participate.

As we indicated in the previous comment, we continue to recommend that NRCS adopt an alternative formula for determining base payments that would use local agricultural land values instead of cash rental rates. If land values were used, it might be useful to explore the use of reduction factors at least as high as those suggested in the CSP IFR in order to keep the base payments at reasonable level.

4. Recommendation on Grass-based Agriculture: Amend the rule to establish that base payments will be based on land capability classes rather than current land use.

In our comments on the CSP proposed rule, we noted that in determining base payments for pasture and grazing land, the proposed rule would determine the cash rent value of the land based on how the land is being used currently rather than by land capability. Since rental rates for pasture are far lower than for cropland, base payments would be far lower for grazers, even if their land is fully capable of producing crops and, in a different owner or operator's hands, might well be cropped. Land that has been placed in permanent cover for grazing or for permaculture, a practice with enormous environmental benefits, could be unwisely penalized by the proposal.

We appreciate the step taken by NRCS to address this problem by adding a new definition in the CSP IFR for "Pastured cropland" to mean 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. We commend you for further providing in the definition that pastured cropland will receive the same stewardship (base) payments as cropland. IFR § 1469.3 and § 1469.23(a)(2)(v).

We continue to urge NRCS to go further by providing that all base payments be based on land capability classes rather than current land use. This change would make the program more equitable and align it more closely with resource concerns rather than the whims of the market or the contradictory signals sent by federal commodity program subsidies.

C. Comments on Existing and New Practice Cost-Share Payment

1. Recommendation: Existing practices payment rates should not be based on the base payment rate, which is based on land rental rates.

Under the CSP IFR, the NRCS Chief will determine a limited set of conservation practices eligible for existing practice payments, with the payments based on a percentage of the 2001 county cost. In the alternative, the NRCS Chief may offer alternative payment methods such as a percentage of the base payment. These payment formulas are based on land rental values rather than on the actual costs of the practices, with additional consideration of the program participant's labor. Therefore, they are not an accurate measure of a *meaningful* incentive or reward for the best agricultural stewards but instead rest on the vagaries of geography and development pressures. They are also not reflective of the environmental benefits that may be gained from the maintenance of existing conservation practices.

We are quite disappointed the agency would choose a lazy, formulaic, and inappropriate approach to this problem. The Administration pushed for the 2001 base year design during legislative development of the program, and the Department has had nearly three years to put the actual base year management and maintenance payment components in place. It appears to us this basic task was left incomplete, despite the Administration's advocacy of the design and despite the long delay in CSP implementation, and now farmers and ranchers are the ones penalized for the bureaucratic mishandling.

2. Recommendation: Improve the CSP cost-share payment for new practices by removing the 50% cost-share cap

The CSP IFR sets a cap on CSP cost-share payments for new practices at 50% of the costs. This blanket cap results in much lower CSP cost-share payments in comparison to cost-share payments set for the same conservation practices in other farm conservation programs. Indeed, the CSP IFR preface notes that the intent is to ensure that CSP new practice cost share payment rates are set at rates similar or less than EQIP rates but no more than 50 percent.

This comparative limitation serves as a disincentive for farmers and ranchers to participate in the comprehensive approach to conservation provided in the CSP, while promoting the piecemeal practice-by-practice approach of EQIP. We are greatly disappointed that USDA, which makes many public pronouncements about agricultural stewardship and conservation, refuses to put good conservation planning at the forefront of its conservation programs. This discrepancy in program payments rates is compounded by the fact that the CSP IFR does not include a 15% bonus for cost-share payments provided to beginning farmers and ranchers, which is intended to provide the incentive for them to incorporate sound conservation planning into their agricultural operations as they take them over and make improvements and investments.

There is simply no rationale for providing much lower payments for CSP practices relative to the cost-share provided for the same practices under EQIP. We urge NRCS to remove the 50% regulatory cap on CSP cost-share payments and bring CSP cost-share payments into line with other Farm Bill conservation programs. States should have the flexibility to set cost-share rates

at the appropriate level depending on their priorities and assessment of needs. We further recommend that that NRCS provide in the CSP rule a 15% bonus for cost-share payments to beginning farmers and ranchers to ensure that they can plan for and implement sound conservation practices and systems into their operations.

3. Recommendation: Apply maintenance payment provisions to new practices adopted as a result of participation in the CSP.

Unlike previous conservation programs providing cost-share assistance, the CSP will cost share not only newly adopted practices but also the operations, maintenance, and management costs of existing, ongoing conservation practices that help the producer reach the resource management system quality criteria. These maintenance payments serve a dual purpose of rewarding the previous actions of the best agricultural stewards and providing an ongoing incentive for all farmers and ranchers both to adopt and to maintain conservation practices and systems on their land that provide significant public benefits over time.

The CSP IFR excludes maintenance payments for new practices by providing payments only for the installation of new practices or systems. This language inappropriately limits maintenance payments to existing practices, effectively prohibiting maintenance payments in later years and in later contracts for new practice installation as part of a CSP contract. This prohibition is not authorized in the CSP statute. In addition, it is inconsistent with the goals and objectives of the CSP as a long-term, stewardship incentive program aimed at maintaining and enhancing conservation systems over the time. The rationale provided by NRCS for prohibiting subsequent maintenance payments for practices that are newly established under the CSP is that “. . . as with other NRCS cost-share programs, the participant is required to maintain the practice for the life of the practice as part of the contract obligation for new practice installation.”²⁹ This rationale ignores the legal fact that the CSP is not like other NRCS cost-share programs and that its authorizing legislation provides for maintenance payments for both existing practices and those practices newly established under the program.

4. Recommendation: Prohibit payments on only those practices required for conservation compliance rather than all practices contained in the compliance plan, and broaden the list of eligible practices.

As indicated in our comments on the CSP proposed rule, the prohibition on program payments for conservation compliance practices is too far-reaching. Many farmers and ranchers have implemented conservation compliance plans that go much further than the basic regulatory requirements for these plans. These producers have taken the initiative and have borne the costs of providing environmental benefits beyond the minimum acceptable to meet conservation compliance standards. The CSP IFR, however, retains the provision that NRCS will not pay an existing practice component of CSP payments for *any practice* that is required to meet the conservation compliance requirements of 7 C.F.R. Part 12. CSP IFR § 1469.23(b)(4).

²⁹ 69 Fed. Reg. at pp. 34510-34511 (June 21, 2004).

The proposed prohibition against paying an existing practice *payment* “for any practice that is included in a participant’s Highly Erodible Land ... plan”³⁰ will heavily penalize those farmers who adopted comprehensive conservation compliance plans while neighbors were allowed by NRCS to adopt various alternative conservation systems, very often with just a single practice and considerably less conservation benefit.

We urge NRCS to rectify this unjust application of the conservation compliance interface with the CSP by modifying the language in § 1469.23 to match the earlier proposed rule language in § 1469.21 (i) which states that payments will not be made for within the CSP plan that “are required to meet conservation compliance requirements...”³¹ The language in § 1469.21 helpfully distinguishes between what was required and what was volunteered. This language should be adopted in § 1469.23(b)(4) and appropriate detailed instructions to state and local offices should be included in the program manual and training modules to ensure this provision is carried out fairly.

D. Enhancement Payment Comments

1. Recommendation: NRCS should thoroughly revise CSP IFR, § 1649.23(d)(5), which provides for determination of enhancement payments.

The CSP IFR provision for enhancement payments is significantly flawed and should be thoroughly revised to meet both the CSP statutory requirements and the policy and goals of the program.

First, eliminate the phrase “. . . that would not otherwise be initiated without government assistance.” This limitation comes not from the CSP but from EQIP. The EQIP statute provides that payments should not be made for conservation practices that the producer would do even without EQIP payments. Its inclusion in CSP, a program to give rewards to farmers and ranchers who have already undertaken conservation measures is totally inappropriate and not authorized by the CSP statute.

Also, eliminate the language that provides that enhancement payments will be determined “. . . based on a given activity’s cost or expected net conservation benefits above the minimum criteria . . .” Under this language, enhancement payments may be limited to an activity’s cost, which of course, flies in the face of the entire concept of an *enhanced payment*. The goal of enhancement payment, in addition to paying for costs, is to pay to the maximum extent possible for environmental benefits and conservation results. This is particularly important when a CSP participant treats resource problems beyond the NRCS standard, addresses additional resource problems, and for collective action within in a watershed. These activities should be expressly included as enhancement activities, not limited to cost-share but provided with real bonuses to reward exceptional activity.

³⁰ § 1469.23(b)(4)

³¹ § 1469.21 (i)

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Use clear and precise language in Section 1649.23(d) to provide for enhancement payments for both existing and new conservation activity that contributes to the management intensity and resource enhancement and addresses local or additional resource concerns.

We also recommend that the Section 1469.23(d):

- Include minimum payment amounts for activities under the first enhancement factor in order to address the equity concerns of limited resource producers as well as the equity concerns of smaller acreage specialty crop producers following additional provisions for enhanced payments;
- Use the second enhancement factor to encourage producers to undertake additional resource concerns in cutting edge areas that may not have made the state's short list of resource concerns, including but not limited to energy conservation, conservation and regeneration of plant and animal germplasm, environmentally sound management of invasive species, prairie restoration, and pollinator protection and enhancement.
- Base the enhancement payment rate for monitoring and evaluation in part on the degree of effort and sophistication, but also on whether "monitoring and evaluation" itself were to become a conservation practice standard—and thus eligible for cost share payments. If cost shared in the future, the enhancement payment should reflect a consideration for the producer's time and effort. If it is not cost shared, then it should reflect both the cost and time/effort involved.

2. Recommendation: Allow State Conservationists to set graduated enhancement payments systems.

In general, we approve of NRCS State Conservationists, with State Technical Committee advice, being authorized in the CSP IFR to develop proposed enhancement payment amounts for each practice and activity. We further recommend that the CSP rule provide that states may adopt graduated payment systems for enhanced payments. Graduated payments may be appropriate for enhanced payments for the first enhancement factor in the CSP statute, i.e. when a producer implements or maintains multiple conservation practices that exceed the minimum requirements for the applicable tier of participation - including practices that involve a change in land use such as resource-conserving crop rotations, managed rotational grazing, or conservation buffer practices. One approach would be to authorize State Conservationists to undertake pilot programs for graduated enhancement payments to try out different approaches to graduated payments.

3. Recommendation: Provide CSP enhancement payments to farmers and ranchers who establish and maintain complex management systems and practices that provide a high level of environmental and natural resource benefits.

The CSP IFR ignores specific CSP legislative directives to provide enhancement payments for farmers and ranchers who have, or will, establish complex management systems and practices.³²

³² 7 U.S.C. §§ 3838(7) and 3838c(b)(1)(C)(iii).

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Even for the specific legislative enhancement factors that are included in the IFR, enhanced payments are made optional at the discretion of the NRCS Chief, rather than mandatory. In addition, USDA appears to be setting high payment rates for simple conservation tillage systems in many regions, while ignoring other systems and practices which may require more management but provide higher returns to the public in environmental and natural resource benefits.

In order to correct this program implementation defect, we urge USDA to provide the comprehensive package of enhancement payments required by the CSP statute,³³ including the following:

- For cropland, the CSP rule should include enhancement payments for complex Resource Conserving Crop rotations with a diversity index for enhanced payments.
- Enhancement payments should also be available for rotational grazing systems, conservation buffers, conservation and regeneration of plant and animal germplasm, environmentally sound management of invasive species, agroforestry practices, native prairie restoration, and pollinator protection and enhancement.
- Continue the enhancement payments for energy conservation provided in the CSP IFR.
- Retain the enhancements payments for on-farm/ranch research and demonstration activities and for on-farm/ranch assessment and evaluation activities provided in the Interim Final Rule *and ensure that these enhancement payments are provided for in every state and sign-up.*

The statute makes resource-conserving crop rotations, managed rotational grazing, and conservation buffers eligible for enhancement payments under the first enhanced payment criteria.³⁴ The CSP IFR ignores the law's clear mandate to reward producers who adopt diversified resource-conserving crop rotations, managed rotational grazing systems, or conservation buffers with enhancement payments. In adopting this policy, Congress recognized the strong, positive multiple environmental benefits provided by these sustainable agriculture systems, and the rules for the program should not abandon this legal requirement.

In fact, USDA should make the enhancement payments for these conservation systems with big conservation pay-offs a highlight of the program by providing direct, substantial incentives for farmers and ranchers to adopt them. The rule should be amended to name these conservation systems in the rule as qualifying for enhancement payments on a nationwide basis.

4. Recommendation: Amend the regulatory definition of the term “resource-conserving crops” to correspond precisely with the statutory definition and issue immediate guidance to the states on how to incorporate resource-conserving crop rotation into the Field Office Technical Guides so that payments can be made to CSP participants.

³³ 7 U.S.C. § 3838c(b)(1)(3).

³⁴ 16 U.S.C. § 3838c(b)(1)(C)(iii)

The law defines a “resource-conserving crop rotation” as a “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).”³⁵

Unfortunately, the CSP IFR changes this statutory definition because of imprecise regulatory drafting. In the IFR, the regulatory definition takes the decisive “and” connecting the items in the list and converts it to an “or” which has the effect of greatly weakening the definition. In addition, the rule adds “maintains or” prior to the words “improve soil fertility and tilth.” IFR § 1469.3. We urge NRCS to define the term “resource-conserving crop rotation” in the CSP rule using the statutory wording.

We also appreciate the addition of most of the language recommended by SAC to the definition of resource-conserving crop rotation to make the provision operational by providing specific examples of resource-conserving crops. We note, however that two provisions which we recommended were omitted from the provision. We recommend that you add at the end of the following of the definition of “resource-conserving crops” the following:

*“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.”*

We urge you to adopt this more complete and corrected definition for resource-conserving crop and resource conserving crop rotations as part of the program rule. Getting this definition right, and ensuring it is incorporated into program implementation at all the appropriate points, is very important to the program’s success in facilitating sustainable conservation systems improvements. We also urge you to make the necessary and appropriate revisions to the conservation practice standard for conservation crop rotation to accommodate the resource-conserving crop rotation and resource-conserving crop definitions and corollary considerations.

5. Recommendation: Amend the CSP rule to establish biological resource conservation and regeneration, including plant and animal germplasm conservation as a CSP resource concern and further provide in the CSP rule that practices and activities that address this resource concern are eligible for enhancement payments under the CSP rule.

The CSP statute authorizes the USDA to establish resources of concern in addition to those specifically listed in the statute.³⁶ We urge the NRCS to revise the CSP rule to provide as additional conservation purpose (resource of concern) the conservation and regeneration of biological resources, including plant and animal germplasm conservation. The U.S. increasingly

³⁵ 16 U.S.C. § 3838 “resource-conserving crop rotation”

³⁶ 7 U.S.C. 3838a(a).

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depends on the efforts of individual farmers and ranchers to ensure the maintenance of these biological resources by planting seed from government seed banks and other seed sources and raising and breeding rare livestock and poultry breeds. These genetic resources are the genetic diversity banks which will be invaluable to the nation as concentration in commercial seed marketing channels increases. In addition, the future of public resources for maintaining seed stocks is increasingly uncertain and only one federal facility includes germplasm banks for domesticated animals.

CSP enhancement payments should reward farmers for "biological resource conservation and regeneration," one of the conservation activities specified in the statute as eligible for CSP payments.³⁷ Most importantly, this should include plant and animal germplasm conservation and the on-farm suite of practices of seed saving, preservation, screening, evaluation, selection, and plant and animal breeding activities, practices which contribute to increased biodiversity, longer and more diverse cropping systems, enhanced wildlife habitats, and conservation of a critical resource for the sustainability of the food and agricultural system.

NRCS should also act as quickly as possible to provide full natural resource concern and conservation practice recognition to germplasm conservation. New standards and criteria should also be developed for protection and conservation of pollinators, similar to current pest management practices for creating habitat for beneficials. This should include managing lands to reduce habitat loss, reducing pollinator mortality due to improper pesticide use, and restoring pollinator populations and habitat practices.

We note that ultimately this resource of concern will need to be incorporated as a constituent part of the resources of concern in the NRCS technical guides, with a complete set of conservation practices and standards. With respect to animal issues in particular, we strongly encourage NRCS to consult with the American Livestock Breeds Association on the establishment of these practices and standards.

We further recommend that the CSP rule section on enhancement payments be amended to provide that practices and systems that address the resource issue of conservation and regeneration of biological resources be eligible for enhancement payments.

6. Recommendation: Conservation buffer practices eligible for enhanced payments must be a complete conservation system, including upland treatment to ensure the effectiveness of buffers, and to include specific language permitting economic uses.

The CSP statute provides for enhanced payments for producers with conservation buffers. The law also specifies producers may engage in sustainable economic use options for all land enrolled in CSP, including buffers.³⁸ The CSP rules should define conservation buffers in a way that ensures that a complete conservation system is in place, including full upland treatment to ensure the effectiveness of buffers. The rule should also include explicit language allowing for a full range of sustainable economic use options.

³⁷ 16 U.S.C. 3838a(d)(4)

³⁸ 16 U.S.C. § 3838a(b)(4)

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As we have noted in another section of these comments, the CSP rule could also be made more clear by delineating the range of partial field conservation buffer practices eligible for the CSP. We recommend the following: *“Conservation buffers and partial field practices include, but are not limited to, windbreaks, grass waterways, shelter belts, filter strips, riparian buffers, wetland buffers, contour buffer strips, living snow fences, crosswind trap strips, field borders, grass terraces, wildlife corridors, and critical area planting appropriate to the agricultural operation.”*

7. Recommendation: Eliminate the CSP IFR provision that limits enhanced payments to not greater than 50% of the total CSP payments.

Enhanced payments are the heart of the CSP. They provide the incentives for system changes to increase conservation benefits, for innovation, for on-farm conservation research and demonstration, essentially for all the program components that take farmers and ranchers beyond a simple practice based approach. NRCS has recognized this and has publicly stated the administration’s concern to maximize enhancement. We are greatly puzzled then to find that the CSP IFR contains the provision limiting enhanced payments to 50% or less of the total CSP payments. This limitation serves as a barrier to achieving the statutory goals of the program. It also functions in a similar fashion to the “per acre” cap to disadvantage small and mid-sized operators who with fewer acres who may wish to do the best, most effective conservation work on those acres. Once again with this limitation on enhanced payment, the administration channels CSP funding to operations with the largest acreage, undertaking the least amount of conservation measures on their land. We urge USDA to remove this limitation and restore the balance among sizes and types of farms and ranchers mandated in the CSP statute.

IV. MAJOR COMMENTS ON CONSERVATION PRIORITIES & CONSERVATION PRACTICES

A. Issues Related to Resources of Concern

1. Recommendation: The CSP rule should allow the conservation resource concern priorities to be set at the state level so the program can be as responsive as possible to the major resource issues in each region of the country. We recommend each state select up to six (6) top resources of concern of which two must be soil quality and water quality, with producers then choosing to address at least 2 of the 6 (Tier 1 and Tier 2), or, as applicable, all 6 (Tier 3).

The CSP IFR provides that soil quality and water quality are “nationally significant resource concerns” and therefore every state and region of the country are to adopt soil quality and water quality as their primary resource concerns to be addressed by the program, even if other concerns, such as soil erosion, water conservation, biodiversity, wildlife habitat, ecological restoration, energy conservation, or some other concern is of paramount regional importance. IFR § 1469.4(a). The CSP IFR further provides that the NRCS Chief has the discretion to determine whether additional resource concerns will be national concerns and can also approve

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priority concerns for which enhancement payments will offered for specific locations and land uses. IFR § 1469.4(b).

With these provisions, the NRCS fails to meet the statutory directive that the USDA carry out the CSP to promote conservation and improvement of a full range of explicit conservation purposes, including “*soil, water, air, energy, plant and animal life. . .*”³⁹ USDA has discretion to add to this list of conservation purposes but not to ignore those resource concerns that are explicitly listed in the statute. In addition, the limitation on resources of concern provide in the CSP IFR also imposes an unauthorized limit on the wide variety of conservation activities that can be implemented by a CSP participant, including, among others, “*invasive species management;*” “*fish and wildlife habitat conservation, restoration, and management;*” “*energy conservation measures;*” “*biological resource conservation and regeneration;*” and “*native grassland and prairie protection and restoration.*”⁴⁰ We find nothing in the statute or in the legislative history to suggest that Congress intended this comprehensive conservation program to be transformed, at the discretion of the USDA, into just a soil and water quality program. In point of fact, one of the most prevalent points made about the program during the legislative debate was that it was intended to work for all types of agriculture, all regions of the country, and the full range of resource concerns.

In addition to being contrary to the law, having NRCS national headquarters choose the resource concerns for the entire country is also legally flawed. There is no provision in the statute for headquarters to declare national resources of concern or prioritize the statutory list of resources of concern at the national level. The CSP statute clearly provides that the conservation priorities of a state or locality are to be determined by the State Conservationist, in consultation with State Technical Committees and local agricultural producers and conservation working groups.⁴¹ Basically, the program design provided in the CSP IFR contradicts the locally led conservation and site-specific conservation planning philosophies that the agency has long professed and institutionalized. Perhaps more importantly, the proposal raises very significant equal protection problems. Given the fact that it is easier in certain agro-ecological regions to comply with or exceed soil quality and water quality criteria, and given the CSP IFR insistence on satisfying all quality criteria as a condition for even being eligible for the program, program delivery will necessarily favor certain regions and certain producers over others. As with the arbitrary watershed approach discussed above, focusing the program on two resource concern clusters and applying them to the entire country results in producers benefiting from the program, or not benefiting from the program, based on accidents of geography rather than commitments to conservation and excellence in stewardship.

The correct designation of resources of concern is of central importance to the success of the CSP. The overriding goal should be to ensure that the problems a farmer decides to address are ones that have been identified as actual resource concerns on that farm -- or would be absent the conservation farming system that may already be in place -- the resolution of which will make a significant impact on the nation's resources.

³⁹ 16 U.S.C. § 3838a(a)

⁴⁰ 16 U.S.C. § 3838a(d)(4)

⁴¹ 16 U.S.C. § 3838a(d)(3)(B).

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Our recommendation is to have the conservation resource concern priorities set at the state level so the program can be as responsive as possible to the major resource issues in each region of the country. Each state may select up to six (6) top resources of concern of which two must be soil quality and water quality. Producers are then required to address at least 2 of the 6, in Tier 1 and Tier 2 plans, or, as applicable, all 6 in Tier 3 plans. With every CSP participant choosing from a short list of top priority natural resource concerns relevant to their farm and locality, resolving those resource concerns to the non-degradation, sustainable use standard, and being encouraged and rewarded to move to significant resource enhancement levels, the CSP would be well targeted to the actual problems of each farm and region. Good targeting, plus the fact that CSP is the first federal conservation program to require statutorily that solutions be planned to resource management system quality criteria, means the CSP will yield real results and move the agency far beyond where it has been with other programs at its disposal.

The primary criterion for a resource of concern should be evidence of significant degradation of a resource, either on the farm itself, on other farms in the locality, or off-site. In other words, the resource conditions related to one or more resources of concern do not meet the minimum acceptable quality criteria, or would not absent conservation systems already put in place. The rule should require State Conservationists to designate resources of concern, based on the input of the State Technical Committees and local work groups. Some resources of concern may be statewide; some may be localized to reflect unique geographic, climatic, or production situations. Each state should review all available information from the full range of other agencies with missions related to water and air quality and wildlife and also seek out local input to determine where resource degradation is occurring. The NRCS should review each state list of resources of concern and give final approval to the list when a factual basis for impairment of resources exists and when a reasonable basis for prioritization of concerns has been demonstrated.

2. Recommendation: The CSP should include measures to ensure that quality criteria are quantifiable and measurable to the maximum extent possible.

To the maximum extent possible, quality criteria should be quantifiable and measurable. Where existing quality criteria are quantifiable, these measures should be used and required for CSP participants. Where existing quality criteria are not quantifiable, but could be, effort should be made to revise the technical guides on an expedited basis. In cases where measurements and measurement tools are not fully developed, the agency should accelerate research and demonstration projects, using farmers as part of the research through the CSP on-farm research and demonstration provision and enhanced payments. Whenever practicable, CSP farmer-driven initiatives along these lines should be linked with broader agency, university, or NGO research projects to improve quality criteria and measurement techniques and tools. We urge you to include in the CSP rule a specific provision to move the program, and thus the agency's basic infrastructure, toward quantifiable and measurable criteria and tools.

With regard to this recommendation, we acknowledge and appreciate the recognition by NRCS of the Soil Condition Index as a starting point to provide an overall indication of the trend of quality of the soil resource. SAC has worked with NRCS to improve the application of this Index to the measurement of soil quality criteria and we plan to continue this collaboration to identify and demonstrate the use of other measures of quality criteria for the CSP resources of concern.

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3. Recommendation: Resource concerns and quality criteria that are strictly productivity-related should be ineligible under CSP

We appreciate the recognition by NRCS in the CSP IFR that some of the current resources of concern and quality criteria in the Field Office Technical Guides should not apply to the CSP because they are related to increasing productivity rather than increasing conservation benefits and that the practices and activities related primarily to productivity promotion should not be required for participation in the program. IFR § 1469.5(e)(1)(iii). This provision, however, is limited to Tier III plans.

These “should not apply” resource concerns have been a frequent topic of conversation at State Technical Committee meetings. By and large these seemingly inapplicable resource concerns in the technical guides relate to strictly productivity-related concerns with little or no conservation or environmental benefit. For instance, water quantity resource concerns related to excessive seepage or subsurface water, or plant life resource concerns related to crop productivity and vigor, appear to have no place in the CSP resource concern selection and payment system. We urge NRCS to clearly indicate in the CSP rule, or at least in the program manual and instructions to the state offices, that resource concerns listed in the FOTGs are not applicable to all CSP conservation plants, if the resource concern has no direct conservation and environmental benefit.

B. Conservation Practice Issues

1. Recommendation: Allow the full range of eligible NRCS-approved practices to be eligible for consideration as part of site-specific CSP conservation plans and systems.

The CSP IFR retains the provision from the CSP proposed rule that allows the NRCS Chief to limit CSP payments for all program payment components to a limited number of conservation practices and activities to be selected by headquarters. State Conservationists may then choose from this restricted list a subset appropriate to their area. The CSP statute does not authorize this dramatic scaling back of normal NRCS practice of providing support for all NRCS-approved conservation practices. In fact, the statute provides a list of 18 specific conservation practices and broad categories of conservation practices that are specifically included as choices for CSP contracts. The NRCS is authorized to add conservation practices to that list if the conservation practices are determined to be “. . . appropriate and comparable to other conservation practices included in the list.”⁴² But there is no authority for the NRCS to prevent CSP participants from including the listed conservation practices in their conservation plans where the practices and activities meet the test of achieving the quality criteria for the appropriate resources of concern.

The CSP statute does provide that practices eligible for payment must contribute directly to meeting and exceeding the applicable quality criteria and must do so in the least cost manner and must be an integral part of an overall conservation system, since the CSP is a system-based, not

⁴² 16 U.S.C. § 3838a(d)(4)

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practice-based program. Surprisingly, the CSP IFR in § 1469.8 does not reference the contribution of selected practices to a conservation system.

Even more surprising is a basic philosophical contradiction contained in the CSP IFR. On the one hand, states are to choose eligible practices for both new practice payments and existing practice payments from the short list provided by national headquarters. On the other hand, the rule states that national headquarters will determine what is on the short list in part by the practices “(a)bility to address the resource concern based on site specific conditions.”⁴³ This, of course, is both a logical and philosophical contradiction.

The CSP IFR provision for restricting eligible practices is in direct contradiction to the explanation of the very same provision in the prefatory comments regarding this section which states that:

“ CSP emphasizes conservation and the improvement of quality of the soil, water, air, energy, plant, and animal life by addressing natural resource conditions, *rather than using a prescriptive list of conservation practices and activities*. The conservation stewardship plan will identify a suite of practices, treatments, and activities that a participant can use to mitigate or prevent a resource problem or to produce environmental benefits, such as carbon sequestration. One example is the use of the SCI. The producer has many conservation management options available to improve their rating on this index scale including changing tillage intensity or equipment, adjusting the crop rotation to include soil conserving crops, or adding additional practices or activities such as cover crops. A complete list of potential actions for selection would be impractical, but by working with a conservation professional, the options are easily revealed in the planning process and through the use of simple models.”⁴⁴

The interactive process based on conservation planning and the use of the full array of conservation practices allowed under the CSP statute, treatments, and activities that address conservation problems related to a resource of concern is a far cry from the prescriptive list of limited conservation practices that will be available under the CSP IFR. The explanation for this contradiction apparently lies in the text explaining that the limited selection of conservation practices will be made after the watershed selections are made. Once again, the NRCS attempt to shoehorn the CSP into its limited watershed approach to program implementation flies in the face of both the statutory directives and the agency’s own explanation of how the CSP should operate. We also note this process of selecting eligible practices and activities after the announcement of selected watersheds will leave farmers and ranchers uncertain until the last minute about practices that will be eligible for CSP funding. This is *not* a process conducive to well thought out conservation plans that will maximize the environmental benefits provided with CSP funds.

⁴³ § 1469.8(a)(vi) (2004)

⁴⁴ 69 Fed. Reg. at p. 34517.

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Also, in our view, while there may eventually be a number of conservation practices that stand out as commonalities across a large number of CSP plans in a given agro-ecological region. Having the NRCS national headquarters scrambling with each CSP signup to pick the “winners” upfront unnecessarily restricts producer flexibility and innovation. We recommend a restoration of site-specific conservation planning within the CSP-designated conservation system and holistic management approach.

We also urge the agency to develop a strong emphasis within the CSP for on-farm research, demonstration, and pilot testing of innovative conservation practices and systems. This is mentioned in the CSP IFR rule, but gets short shrift.

We also note that NRCS indicates another rationale for limiting the CSP eligible conservation practices, i.e to avoid program redundancy by focusing CSP on a specific list of eligible practices. First, we note that CSP does have statutory restrictions on the use of a subset of practices that include those related to the: (i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; (ii) The purchase or maintenance of equipment; or (iii) A non-land based structure that is not integral to a land based practice, as determined by the Chief. These practices are covered by EQIP. In addition, NRCS assumes that it can carve out a subset of practices that are allowed, or encouraged, by the CSP statute, declare them ineligible as CSP practices, and divert farmers and ranchers to EQIP to get funding for these practices. But, of course, many farmers and ranchers who apply do not get EQIP funding.

The overall result of the arbitrary restriction of conservation practices with each CSP sign-up may well be a CSP that emphasizes Tier 1 and Tier 2 plans but does not provide sufficient tools for farmers and ranchers to achieve the Tier 3 goal of comprehensively addressing all resources of concern with the full set of conservation tools provided in the CSP statute.

2. Recommendation: Delineate in the CSP rule the range of partial field conservation practices eligible with the following language: “Conservation buffers and partial field practices include, but are not limited to, windbreaks, grass waterways, shelter belts, filter strips, riparian buffers, wetland buffers, contour buffer strips, living snow fences, crosswind trap strips, field borders, grass terraces, wildlife corridors, and critical area planting appropriate to the agricultural operation.”

Partial field conservation practices can be incorporated into sustainable agricultural systems to address the needs of multiple resource concerns. For example, wetland buffers can improve water quality by trapping sediment before it runs into streams and can also provide wildlife habitat. In addition, many of these practices are very cost-effective measures whose maintenance can be incorporated with relative ease into agricultural operations after the initial steps are taken to establish the practice. Given the central role that these practices play in many sustainable agricultural systems, we recommend that the CSP rule include express delineation of the full range of partial field conservation practices that have been adopted by the NRCS.

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V. COMMENTS ON PROVISIONS FOR BEGINNING AND LIMITED RESOURCE PRODUCERS

A. CSP Beginning Farmer and Rancher Definition Needs Tightening

Recommendation: The beginning farmer and rancher definition should be tightened to help target the cost-share bonus to individuals without large landholdings and without large net incomes. The rule should also expand on the day-to-day labor and management test to require that the participating family provide all the management and a substantial part of the labor.

The CSP IFR defines “Beginning farmer or rancher as *“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 or joint operation, 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.” IFR § 1469.3.*

As commented previously in our response to the CSP proposed rule, this proposed definition is generally consistent with the definition adopted in the EQIP final rule, but leaves out several key components of the regulatory definition for FSA loan programs (see C.F.R. § 762.102), including:

- A limitation on the amount of property owned by the individual directly, or through interests in family farm entities. For FSA farm ownership loan purposes, this limit is set at 35 percent of average farm size in the county, as determined by the Census of Agriculture. This standard makes sense for real estate loan purposes, but not for the purposes of the CSP. However, the addition of a cap of some kind would target the benefit of higher cost share payments. We would suggest a not greater than average farm size ownership test, or perhaps a percentage somewhat greater than 100 percent.
- Demonstration that available family resources are not sufficient to enable the loan applicant to enter or continue farming or ranching on a viable scale. Again, this is oriented to loans, not cost-share, but would suggest that a net income test could be useful in targeting the special beginning farmer and rancher payments.

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The proposed definition would also be improved by adopting the FSA guidance in Notice FLP-252 that requires all the day-to-day management and operational decisions should be made by members of the farm family as well as a substantial amount of the full-time labor required in order to qualify under the substantial day-to-day labor and management test.

B. Definition for Limited Resource Farmers and Ranchers Needs Adjustment

Recommendation: The definition of limited resource producer in the CSP rule should be modified to increase the gross farm sales and poverty level tests.

We welcomed the attempt made in the CSP proposed rule to develop a definition for limited resource farmers and ranchers, but we urged you to revise the definition, as we did in our comments on the EQIP proposed rule, to include gross sales of not more than \$250,000 and total household incomes at or below 150% of the poverty level. This definition was not developed for the CSP IFR, but rather for all programs. NRCS responding to our request with the statement that the current definition for a limited resource producer is a USDA-wide definition and there is no reason to change it for CSP.

We continue to urge NRCS to change the definition of limited resource producer for the CSP for the following reasons. Due to the unique characteristics of farm operations, where business and family finances and costs are combined, tying the definition to the poverty line will exclude many farm families struggling to maintain their operations. As a statement of need for special assistance, the proposed definition is overly restrictive in our view. We also note the 100% of the poverty line level is considerably lower than the qualifications for many federal social service and feeding programs. For families that rely on the farm for much of their income, gross sales of considerably more than \$100,000 can still result in extremely low family incomes. As long as both criteria have to apply in order to qualify someone for the extra cost share assistance, we believe our proposed upward adjustments are quite reasonable. It is important to remember that cost share payments are not cost-free to the producer. They are still making expenditures for their portion of the cost share arrangement. The public would be well served by obtaining greater levels of conservation by making it possible for families with low incomes to participate in the program.

VI. ADDITIONAL RECOMMENDATIONS

A. General Recommendation: Delete from the CSP rule § 1469.2(b) which grants the NRCS Chief authority to modify or waive any provision of the CSP regulations, 7 C.F.R. Part 1469, on a case-by-case, ad hoc basis.

We strongly object to the CSP IFR provision which grants the NRCS Chief the authority to modify or waive any provision of 7 C.F.R. Part 1469 (CSP regulations) on a case-by-case, ad hoc basis. IFR § 1469.2(b). This provision is an invitation to administrative overreaching and ad hoc, arbitrary action by the NRCS staff in violation of the Administrative Procedures Act. If NRCS finds in particular situations that the application of a regulatory provision is inappropriate and inconsistent with the goals of the program, then NRCS should first consider issuing guidance for or clarification to the regulatory language to address the issue. If that step is not sufficient to

address the problems, then NRCS should consider revisions to the regulations. We also note that the language in this provision is so broad and so vague on its face that it violates basic principles of sound regulatory drafting.

B. Administration of CSP Contracts

1. Recommendation for Renewal of Contracts: Include in the CSP rule a provision that expressly implements the statutory provisions for CSP contract renewal.

We note that in the CSP IFR, NRCS has removed a provision included in the CSP proposed rule that would have given the NRCS Chief the discretion to determine if a CSP contract would be renewed. But the CSP IFR continues the failure of NRCS to provide a clear regulatory provision for contract renewal in keeping with the CSP statute.

The statute has a clear and simple provision on contract renewals, with one exception clause. The general rule is "*at the option of a producer, the conservation security contract of the producer may be renewed for an additional period of not less than 5 nor more than 10 years.*"⁴⁵ The exception clause requires any producer renewing a Tier 1 contract without moving to a higher tier to either add new conservation practices on land currently enrolled or to enroll a new portion of the farm and meet the eligibility criteria that pertain.⁴⁶ Rather than putting a renewal provision into the CSP rule, NRCS now has included a provision in the CSP IFR that reads "*Contracts expire on September 30 in the last year of the contract. A participant may apply for a new conservation stewardship contract in a subsequent signup.*" IFR § 146.21(g). The opportunity to apply for a new conservation stewardship contract, however, is not the same as the statutory guarantee that the holder of an existing CSP contract has a right to renew that contract. Indeed, with the NRCS plan to rotate eligibility among watersheds, a CSP applicant may have to wait years for the opportunity to enter into a new contract.

One of the major policy innovations of the CSP is to offer incentives to producers to *maintain* environmentally-friendly production systems for the long term. The CSP IFR ignores the clear requirement of the law and would effectively gut the CSP as a "green payments" program, if farmers and ranchers do not have a renewal option after a single multi-year contract period. This goes to the very heart and nature of the program. NRCS only explanation for the failure to include a CSP contract renewal provision is that statement in the CSP IFR prefatory material that there is no need to repeat a statutory directive. There is, however, a need as a matter of sound program administration and regulatory drafting, for NRCS to draft clear and unambiguous regulations and other program materials to implement a clear statutory directive such as the CSP contract renewal provision. In addition, we are puzzled that NRCS should include a number of other statutory directives but deliberately ignore requests to include this directive. We can only conclude that the agency is reluctant to comply with this directive and hopes that its omission will lead to confusion among farmers and ranchers as to their rights under the CSP statute.

C. Recommendation on Definition of Agricultural Operation: Revise the proposed definition of agricultural operation by deleting the words "and constituting a cohesive management

⁴⁵ 16 U.S.C. § 3838a(e)(4)(A)

⁴⁶ 16 U.S.C. § 3838a(e)(4)(B)

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unit,” and tighten the interface between the definition and the “one contract per agricultural operation” requirement.

NRCS should utilize a strict one-producer, one-contract approach to CSP contracts as a way to provide the fairest treatment of all producers and to guard against program fraud and abuse. Multiple contracts are not contemplated by the statute, are unnecessary, and would only serve to circumvent the clear intention of the statutory payment limitation provision. Congress clearly intended to limit the funds flowing to each individual producer under CSP – even if they might do more for conservation with larger payments. The intent is to entice all farmers and ranchers to participate, but limit payments to a moderate amount per farmer or rancher per year. The program was not intended to pay for every last possible conservation practice and every last possible acre. To do so would not only run up the cost of the program substantially, but also risk the loss of public support and enthusiasm for the program, especially if large payments were to go to very large acreages with only minimal conservation measures established.

We therefore commend you for developing a unified definition for the term agricultural operation that incorporates all agricultural land, whether owned or leased, under the control of the participant who is providing active personal management (general supervision and services, whether performed on or off site) of the operation. This definition, taken with the provision in the CSP IFR for delineation of an agricultural operation by the applicant, IFR § 1469.5(d)(4), reduces the opportunity for strategic manipulation of the “agricultural operation” to obtain multiple CSP contracts. We also approve of the limitation of one CSP contract per application period.

We continue to urge NRCS, however, to delete from the definition the of the term “agricultural operation” and from the CSP provision for delineation of an agricultural operation the words, “*and constituting a cohesive management unit*”⁴⁷ as they could be construed as a potential loophole. Our concern in this respect was heightened by the comment made in the prefatory comments to the CSP proposed rule: “*NRCS’s definition of an agricultural operation encourages producers to submit a single contract for all eligible land, rather than separate contracts, to the extent such land represents a cohesive management unit.*” (*emphasis added*)⁴⁸ That language seemed to openly invite abuse.

We urge you to drop the “cohesive management unit” language from the definition of agricultural operation and from the provision for delineating an agricultural operation and to hue closely and uniformly to the one contract, one producer limit. With the deletion of this language, we could support, without reservations, the language of the CSP IFR in the contract requirements section limiting program participants to one contract per agricultural operation.⁴⁹

⁴⁷ § 1469.3

⁴⁸ 69 Fed. Reg. 206 (2004)

⁴⁹ § 1469.21(b)

D. Having a Certified Organic Farm Plans Should Streamline an Organic Farmers' CSP Qualification Process

Recommendation: The rule should be amended to include a provision requiring NRCS to provide a specific list of addendums, if any, that would be required for a certified organic plan under the National Organic Program to qualify as a CSP conservation plan.

We noted with approval in the preface to the CSP IFR that NRCS stated that the CSP final rule pramble will include a clear mechanism for coordinating participation in the National Organic Program and the CSP. Under the USDA organic certification program, organic producers devote significant time and expense in developing a farm plan. These organic farm plans require farmers to provide detailed description of the practices that they will employ on their farms to conserve natural resources. Therefore, it would be duplicative to require a certified organic producer to "start from scratch" in developing a farm plan for purposes of qualifying for CSP payments. Instead, we urge that the CSP rule include a provision stating that a certified organic producer who wishes to enroll their entire farm in the CSP should be presumed to qualify for Tier III payments, and that NRCS provide a very specific list of addendums, if any, that must be made to the existing organic farm plan in order to qualify for those payments.

We have requested repeatedly over a period of almost four years now that NRCS and the USDA National Organic Program develop clear mechanisms for coordinating participation in the NOP and the CSP. USDA staff should deliver these complementary programs in the most farmer-friendly, least burdensome fashion possible. We assume that this overdue consultation is taking place and that NRCS and AMS can reach an effective method for coordinated NOP plans and CSP plans. Ideally, producers with approved organic certification plans under the National Organic Program should have the option to simultaneously certify under both the CSP and NOP if they meet the standards of both. In addition to being farmer-friendly, this process would also improve both programs – helping to improve conservation standards under organic plans and bringing the enormous environmental benefits of organic systems to the CSP and potentially other NRCS conservation programs. The fact that several NRCS state offices have been able to accomplish this interface gives us cause for hope. Now is the time for parallel action at the national level. Adding organic systems to the national handbook will foster maximum environmental benefit from organic systems and facilitate the expanded use of NRCS services in meeting the needs of the steadily growing number of organic producers.

E. Promotion of On-Farm Conservation Research and Demonstration Issues

1. Recommendation: The CSP rule should reference more detailed on-farm research and demonstration information and protocols that should be made available through additional, forthcoming materials. Those materials should include instructions for establishing cooperative agreements with entities with demonstrated capabilities coordinating and providing technical assistance for on-farm conservation research and demonstration.

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The CSP statute contains two specific provisions for on-farm conservation research and demonstration activities. The USDA is expressly authorized to approve conservation security plans that include on-farm conservation research and demonstration activities.⁵⁰ In addition, on-farm conservation research, demonstration, or pilot projects, as well as assessment and evaluation activities relating to practices, are expressly eligible for enhanced payments.⁵¹

Given the statutory attention to on-farm conservation research and demonstration, we urge USDA to aggressively promote the inclusion of research elements and educational programs in CSP contracts and to reward such activities with significant enhanced payments. Nothing will promote conservation better and faster than careful proof of its effectiveness and the ability to see it in action on a real farm in your area. By the same token, by investing in conservation research, producers have a greater stake in the actual outcomes and will be empowered to assist in the evolution of technical guides and conservation choices.

In establishing protocols and payment rates for on-farm research and demonstration, we encourage the agency to adopt and adapt the highly successful model of producer-initiated grants under USDA's Sustainable Agriculture Research and Education (SARE) program. We also strongly encourage the agency to develop cooperative agreements at the state and regional levels with non-profit organizations and colleges and universities to assist with the implementation of this element of the CSP.

We would particularly encourage promotion of the research and demonstration option in a linked fashion with enhancement factor 5, emphasizing farm and environmental results monitoring and evaluation. The on-farm research and demonstration and on-farm assessment and evaluation activities would also be perfect matches for working on key emerging resource concerns that are not yet part of the Field Office Technical Guides.

The CSP rule should reference additional guidance material that will provide details for the on-farm research and demonstration option, including the format for applications, tips for creating eligible projects, places to go for good information and technical assistance, payment structure, ideas for group or joint proposals, etc. We would welcome the opportunity to provide NRCS staff with recommendations for these materials.

2. Recommendation: Encourage farmers and ranchers to undertake CSP on-farm conservation research projects and demonstrations in coordination with non-governmental organizations with experience in running on-farm research programs and/or in cooperation with other USDA, land grant or cooperative extension on-farm research initiatives.

We also recommend that USDA encourage farmers and ranchers to coordinate their CSP on-farm conservation research projects and demonstrations in coordination with entities and institutions with experience in on-farm research programs. This could be accomplished in the CSP rule by increasing the enhanced payment for farmers and ranchers who take the time and effort to enter into these collaborations. Over the long run, USDA could benefit from a network

⁵⁰ 7 U.S.C. § 3838a(d)(2)(A).

⁵¹ 7 U.S.C. § 3838c(b)(1)(C).

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of farmers and ranchers who are providing empirical, “real world” data on the conservation practices and systems which underpin all the USDA conservation programs.

F. Forested Land Issues

1. Recommendation on Incidental Forested Land: Add the following definition to Section 1469.3: “Forested land that is an incidental part of an agricultural operation” means forested land with agroforestry operations defined as intensive land-use management that optimizes benefits (physical, biological, ecological, economic, social) from biophysical interactions created when trees and/or shrubs are deliberately combined with crops and/or livestock.”

We note that the CSP IFR provides definitions for “Forested land” and “Incidental forest land” which are a vast improvement over the CSP proposed rule. IFR § 1469.3. The CSP proposed rule used definitions which excluded incidental forested land from CSP land eligibility, in contradiction to the CSP statutory directive that eligible land include “. . . forested land that is an incidental part of the agricultural operation”⁵²

We approve of the definition of “forested land” but still find that the definition of “incidental forest land” is too restrictive. The CSP IFR definition of “incidental forest land” now includes all forested bottomland and small 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 NRCS field office technical guide standards for wildlife practice. This is a very restrictive definition, both in terms of the typology of forest land covered and the limitation of eligible conservation practices to wildlife practices. Overall, the definition still suffers from the major flaw of ignoring the function of the forested land. We continue to urge NRCS to adopt the following functional definition for incidental forest land:

“Forested land that is an incidental part of an agricultural operation” means forested land with agroforestry operations defined as intensive land-use management that optimizes the benefits (physical, biological, ecological, economic, social) from biophysical interactions created when trees and/or shrubs are deliberately combined with crops and/or livestock.”

This recommended definition focuses on the role of the forest land as supplementary or contributing to an agricultural operation, as opposed to forested land used solely for commercial timber production without an agricultural use on the forested land itself or a functional relationship to agricultural operations on adjacent cropland, pasture, rangeland, orchards, or other non-forested land in an agricultural operation. The definition is adapted from Gold, M.A., Rietveld, W.J., Garrett, H.E., and Fisher, R. F., “Agroforestry Nomenclature, Concepts, and Practices for the USA, ” in *North American Agroforestry: An Integrated Science and Practice* (2000)(edited by H.E. Garrett, W.J. Rietveld, and R.F. Fisher, American Society of Agronomy, Madison, Wisconsin at pp 66-67).

In addition, we recommend that NRCS in CSP guidance and manuals on this issue refer to NRCS Agroforestry Technical Note No. 1 (July 1, 1996) (posted on the web at

⁵² 7 U.S.C. § 3838a(b)(2).

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www.nrcs.usda.gov/technical/ECS/forest/technote1.html) entitled *Agroforestry for Farms and Ranches*. This technical note defines agroforestry as “. . . the intentional growing of trees and shrubs in combination with crops or forage. Agroforestry also includes tree and shrub plantings on the farm or ranch that improve habitat value or access by humans or wildlife, or that provide woody plant products in addition to agricultural crops or forage. Agroforestry is distinguished from traditional forestry by having the additional aspect of a closely associated agricultural or forage crop.”

This technical note describes specific agroforestry systems, including, among others, windbreaks, alley cropping, forest farming, multistory cropping, living snowfences, and riparian forest buffers and discusses the NRCS conservation practice standards which can be incorporated into these systems. We note that in the CSP IFR, NRCS has expanded the definition of “Agricultural land” to include areas used for a subset of these practices, i.e. strip-cropping or alley-cropping and silvopasture practices, but with regard to non-industrial forest land these practices will only be eligible for CSP payments on forest land that meets the narrow definition of “incidental forest land.” We recommend that NRCS allow include all these agroforestry systems and underlying practices as eligible for CSP funding.

This attention to agroforestry is particularly important in cooler forested regions of the country, which may have very short growing seasons for conventional row crops but which can provide significant food resources from forested areas and can incorporate forested areas into agricultural operations. For example, forested areas can be used by grazing animals as shelter and forage areas. Provision for agroforestry is also important in many southern states where forested land also provides grazing and shelter areas and where agricultural crops may be intercropped in forest holdings.

2. Recommendation: All private non-industrial forested land that falls within the recommended functional definition for “incidental forested land” should be land eligible for inclusion in a CSP contract under Section 1469.5(b)(2) of the rule. The level of treatment that NRCS should require for forested land included in a CSP contract as incidental to the agricultural operation should be the level that meets relevant quality criteria and should be eligible for all forms of CSP payments.

3. Recommendation: Agroforestry practices that assist the producer to enhance resource conservation should be included in enhanced payment formulas.

In addition to including in the CSP agroforestry systems and related conservation practices on forested land, we also recommend that a CSP contract extend to other conservation practices on forested land where that practice complements practices on other agricultural land under the contract. For example, many farmers and ranchers use intensive rotational grazing systems on pasture and rangeland that include measures to protect bird nesting habitat. If the resource of concern and objective of a CSP contract is wildlife enhancement, adjacent forested land could be included if conservation measures for food or cover for fledglings such as provided in NRCS Conservation Practice Standard No. 645 - Upland Wildlife Habitat Management, are established on the forested land in coordination with the systems and practices established on the pasture or

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rangeland. Agroforestry practices and systems that enhance resource conservation should be eligible for enhancement payments.

We are not asking NRCS to invent an array of brand new conservation practices and standards to incorporate agroforestry on incidental forested land into the CSP. As we discussed above, NRCS has already established numerous conservation practice standards that are intended to be used in agroforestry systems or that are compatible with agroforestry systems. Forested land that is incidental to an agricultural operation should be treated on the same footing as other agricultural land under the CSP contract.