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# United States Senate

COMMITTEE ON  
AGRICULTURE, NUTRITION, AND FORESTRY

WASHINGTON, DC 20510-8000

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October 5, 2004

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OCT 12 2004

The Honorable Ann M. Veneman  
 Secretary of Agriculture  
 200-A Jamie L. Whitten Building  
 Washington, D.C. 20250

Dear Secretary Veneman:

We are writing to provide comments on the interim final rule (IFR) for the Conservation Security Program (CSP) issued in the Federal Register on June 21, 2004. We appreciate that USDA conducted the first CSP sign up and commend the Natural Resource Conservation Service (NRCS) staff for their hard work. However, it is clear from the sign up that the IFR contains significant inadequacies. The following changes are critical to carry out the CSP as enacted in the Farm Security and Rural Investment Act of 2002 (farm bill).

As we noted when we submitted comments on the proposed rule in a letter dated March 2, 2004, it remains essential that these regulations faithfully carry out CSP as it was signed into law by President Bush as part of the farm bill. The proposed rule had many serious flaws, as pointed out in the 14,000-plus comment letters. Unfortunately, these comments were largely ignored and the IFR not only retains most of these flaws, but compounds the problem by including additional restrictions. The first sign up, which resulted in uneven enrollment and payments across watersheds, revealed many of these problems. Despite the difficulties with the sign up and disappointment with the IFR, CSP is still widely supported by agricultural producers, conservationists, environmentalists and the public across America because of its potential for agriculture and the environment.

Agricultural producers provide us with much more than the food on our table; they also are entrusted with critical wildlife habitat, clean air and water, sources for renewable energy and recreational areas. Agricultural conservation policy needs to move beyond merely correcting problems and toward valuing conservation and environmental benefits as if they were also products of farms and ranches. Encouraging and supporting voluntary conservation efforts by producers on a wide scale lessens the pressure for environmental regulation of agricultural operations, which can reduce the financial burden on producers while still providing the important protections all Americans demand. Producers should be rewarded for voluntarily providing conservation benefits - - and CSP is the only federal agricultural program designed to do that.

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The potential environmental, wildlife, and economic benefits that come from CSP far outweigh the costs of a fully implemented nation-wide program as the farm bill provided. As was evident from the first sign up, many of these potential benefits will be lost if the existing IFR and sign-up procedures are not greatly improved because agricultural producers will not be able to participate fully and effectively in CSP. As one Iowa producer noted, the rules and sign up only served to "frustrate the best, and alienate the rest." Since the IFR is so similar to the proposed rule, we are attaching our letter of March 2, 2004. Most of those comments remain true for the IFR and should be considered part of this letter.

In our letter of August 2, 2004, we requested a 45-day extension to the comment period on the IFR which was initially scheduled to close on September 20. While NRCS did provide an extension until October 5, it is clear that critical information about the first sign up is not yet available and will not be available until after the mid-October CSP meeting among NRCS staff. Therefore, we believe NRCS must provide all interested parties with an additional opportunity to comment once complete information on the sign up is compiled and made available. Extending the comment period to allow for the best-informed comments and suggestions would not prevent announcing and conducting the next CSP sign up on time.

### I. USDA Continues to Rely On Flawed Underlying Assumptions in the IFR.

As we pointed out in our letter of March 2, 2004, the proposed rule, and now the IFR, rested on the basic assumptions that, (1) CSP is a "capped entitlement" program in which spending may not exceed \$3.773 billion over the 2003-13 fiscal years, (2) that NRCS would be overwhelmed unless the eligibility and payments were severely limited and, (3) that even a very small incentive or reward will cause producers to respond by enrolling in CSP and making substantial conservation efforts.

The final rule must now be modified to conform to the provisions of the 2004 Consolidated Appropriations Act, which for fiscal 2005 and subsequent years restores CSP to the form in which it was enacted in the farm bill. Accordingly, the final rule must be written to allow NRCS to carry out CSP without annual or overall arbitrary funding limits.

Available data show the IFR was far too restrictive and exclusionary, and that enrollment and environmental benefits suffered. Despite promises to enroll 3,000 to 5,000 participants during this first sign up, and despite overwhelming interest, NRCS only enrolled 2,180 producers. Moreover, in order to utilize even the \$41 million provided for CSP in fiscal 2004, USDA had to provide future payments in advance. This clearly indicates that USDA went too far in limiting enrollment and payments as an artificial means of discouraging participation.

Clearly, in drafting the IFR, USDA relied on exaggerated numbers of potential CSP applicants and fears of providing too much financial assistance for conservation to producers as justification for reducing payments and limiting eligibility. As we know now, these actions led to under-enrollment - and resorting to advance payments. As we saw in the first sign up, many

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eligible producers did not participate because the payments were simply too low.

It is critical that the final rule is written to carry out CSP without set spending limits - and allows for an alternative plan for the program only if CSP funding is later capped. Without this fundamental change in approach, we will lose the potential for enormous environmental and wildlife benefits. USDA must also abandon the assumption that producers will participate for minimal financial reward - a fact proven untrue in the first sign up.

## II. Extreme Eligibility Requirements Severely Limit Producer Participation and Conservation Benefits.

The eligibility requirements in the IFR severely restrict participation and are far more restrictive than the resource conservation requirements in the statute. Nor can they be justified by the spending limit for fiscal 2004.

**A. Watershed Restricted Eligibility:** CSP is a program designed to be open to all qualifying agricultural producers in all regions of the country. While we recognize that there was a cap on program cost for fiscal 2004, limiting the first sign up to only 18 watersheds out of a possible 2119 in the nation kept the vast majority of the nation's producers from even applying and competing to enroll. In some watersheds, as few as three percent of the farmers were allowed to enroll. At that rate, it will take far too long before most producers will even have the opportunity to participate in CSP. As a result, many producers who did not have the fortune to live in one of the chosen watersheds felt discouraged and left out. The watershed limitation also obviously denies conservation benefits in excluded watersheds.

It is still very unclear how the watersheds will be selected under the IFR, and the first sign up did not allay our concern that the watershed approach may be arbitrary and fail maximize environmental benefits by excluding some environmentally-sensitive areas insular. If USDA insists on using the watershed approach, we strongly urge you to make the process more transparent.

The rotating watershed approach, in which a producer who misses out must wait as long as eight years to be able to apply again is dampening enthusiasm for a program that was designed to reach producers across the nation. Further, this isolating and insular approach concentrates information about CSP in the designated watersheds instead of distributing it across the entire nation. As a result, with each sign up the watershed approach will require educating producers in the new selected watersheds each year. Even with a watershed approach, we strongly urge you to have USDA reach out to all producers now, so they are aware of CSP requirements and can best prepare to enroll when they do have the chance.

In this first sign up, the watershed approach created several serious problems - most likely in a scheme to limit participation. In the Blue Earth watershed, the sign up and enrollment, which covered producers in both Iowa and Minnesota, was fraught with problems that were only

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partially resolved by the end of the sign up. Primarily, producers in Iowa and Minnesota are subject to different state requirements for nutrient application. As a result, Iowans in the Blue Earth watershed were treated differently from Minnesotans in the Blue Earth watershed. Although the eligibility requirements were ultimately refined to allow producers initially rejected to participate, many were unfairly forced into Tier I when they should have been allowed in higher tiers. By using a watershed approach that crossed state lines, producers in one state were left at a disadvantage to those in another state. This multi-state watershed approach, which attempts to subject producers in many counties to one set of rules, also limits necessary local input that enables conservation programs to succeed. Clearly, USDA must adapt the program to provide equity across state lines. This will only come when there is more coordination allowed among local NRCS staff and producers in the impacted states.

It is critically important that the final rule does not adopt the watershed approach as a way to restrict the program and instead allows producers in all geographic areas to apply for the program. Even recognizing the limited funds for fiscal 2004, the watershed approach did not work.

**B. Soil and Water Quality Focus:** The IFR misinterprets the farm bill by identifying water quality and soil quality as national concerns that outweigh all other resource concerns. This overriding soil and water quality focus is evidently another mechanism designed to restrict and downsize CSP. The law does not prioritize resources as national concerns, but specifically enables producers to address those resources, including air, wildlife, energy, water and soil, important to their operation. Priority resources should be determined at the state and local, not national, level. Soil and water quality undoubtedly are critical resource concerns, but marginalizing other resource concerns as the IFR does will limit the potential environmental and conservation benefits of CSP.

It is essential that the CSP regulations are flexible enough to allow producers across the nation to respond to local resource concerns. For example, in many parts of the West air quality and water conservation are the priority resource concerns. If producers cannot enroll in CSP until they meet soil and water quality criteria, we will lose a critical opportunity to reach all producers across the various regions of the nation. Producers who need to address resources other than water or soil quality will be excluded from CSP if they cannot afford to address water and soil quality. This creates unnecessary financial hardship because they would have to meet soil and water quality without the help of CSP.

We strongly urge you to not to impose a rigid national soil and water quality focus in the final rule and to allow producers the flexibility to address the resource concerns most important to their operation.

**C. Requirement to Have Met Soil and Water Quality Standards:** The IFR requires producers to have already reached the quality criteria level (as stated in NRCS conservation handbooks) for both water and soil quality prior to eligibility. CSP is designed and has

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tremendous potential to help producers attain higher environmental performance. This IFR turns the program on its head because it excludes those producers who are willing to do better until they meet an arbitrarily-imposed standard on their own. In addition to retaining the conservation and environmental benefits from producers, CSP was designed to encourage all producers to go the next step - including using CSP to meet higher soil and water quality standards. Without CSP as a tool to accomplish that, we risk losing the opportunity to dramatically improve environmental practices and performance. As we saw during the first sign up, because of this high entry barrier, many producers who should have been in Tier II or Tier III were limited to Tier I because they had not already fully addressed soil and water quality on their entire operations. This is far too strict.

The preliminary data also appear to show that this approach puts producers of particular commodities and different regions of the country at a disadvantage because it is more difficult for them already to have met water and soil quality standards. We have heard reports that in some watersheds as many as 40 percent of producers, especially crop producers, were turned away because they could not prove they already meet the soil and water quality standards. Many of these producers are good stewards, with riparian buffers, filter strips, et. cetera. that are necessary to protect water and minimize soil erosion. But they were determined ineligible because of inflexible standards - - such as the strict nitrogen application standard as we saw in the East Nishnabotna watershed or because they did not have all the records necessary to prove they already meet soil and water quality standards. This retrospective aspect also put an undue premium on old records, which procedures would have had no reason to know they needed to keep. Lack of records from the past should not keep good stewards out of CSP.

The regulations should follow the farm bill's standard that producers are to meet the requirements of each tier by the end of the contract period, not before enrolling. Requiring producers to have already met both soil and water quality standards prior to eligibility hurts most those producers, like beginning and limited-resource producers, who cannot self-finance conservation. Directing producers to other programs, such as the Environmental Quality Incentives Program, before they are eligible for CSP is inconsistent with the law and clearly excludes producers who would otherwise enroll in CSP and deliver environmental benefits through the CSP's comprehensive approach.

We strongly urge that final rule allow producers to participate in CSP if they agree to address the significant natural resource concern or concerns on their operation to the quality criteria level contained in the NRCS Field Office Technical Guide by the end of the CSP contract. Without this change, we risk losing most of the benefits expected from producer participation in CSP.

**D. Categories:** We continue to be concerned about the use of the category approach to select producers for enrollment in CSP. USDA has not yet provided sufficient information for us to judge fully how the ranking system of categories impacted producers' ability to participate in CSP.

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While it is possible that producers ranked in all categories were able to enroll this year, we fear that in future years only those producers who rank in the very highest categories, i.e. those producers who already have adopted substantial conservation practices and have the financial resources to do more for little reward, will be accepted. Such a ranking system will disadvantage typical and limited resource producers who cannot afford to compete in this category ranking system. And we are concerned that the categories do not give proper credit to producers for diversity in crop and livestock production.

### III. Payments Should Adequately Compensate Producers to Encourage Enrollment and Deliver Conservation Benefits

As we warned in our letter offering comments on the proposed rule, the payment structure under the IFR generated such low payments that many eligible producers choose not to participate. Indeed, there was a shortfall in the first enrollment relative to the money available, forcing USDA to rely on advance payments, and as a result, the opportunity to maximize environmental benefits was lost. This outcome was a predictable result of not following the payment scheme laid out in the farm bill.

The combination of the reduced stewardship base payment, limited cost-share for new practices, cap on enhanced payments, arbitrary cap on maintenance payments and new additional per-acre cap did in fact turn many producers away because the payments did not justify participation. While we do not have all the data from USDA on the first sign up, it appears that livestock producers were disproportionately hurt by the restricted payments. For example, our understanding is that in some watersheds, the base payment was as low as \$0.06 per an acre on pasture land and the overall per-acre cap was not much greater, making it uneconomical to participate in CSP. Moreover, many, if not all, watersheds were given arbitrary overall caps that limited the potential annual payment to far below the allowed \$45,000 permitted by law.

**A. New Per-Acre Cap Dramatically Reduced Participation:** The IFR contained a new, extremely damaging provision that limits the maximum per-acre amount payable to a producer. This new provision unfairly limits the total of the base, maintenance and enhanced payments to no more than the partially-reduced stewardship base payment.

This arbitrary cap reduced the incentive for producers to adopt important, environmentally-beneficial practices. Although, we do not have all the data yet from NRCS, we have heard that most producers who participated in the first sign up received less than they should have under the farm bill because the cap kicked in to lower payments below what producers would have received without the cap. This cap especially deterred the adoption of additional enhanced practices. In some watersheds producers who would have readily implemented additional enhanced practices did not because the cap kicked in. This arbitrary per-acre cap was not necessary for any purpose and only served to limit payments and participation.

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We believe it will become apparent at NRCS' mid-October meeting, that this unauthorized cap was one of the biggest deterrents to participation. The final rule should not include this arbitrary and unauthorized per-acre cap on payments.

**B. Base Stewardship Payment:** The additional reduction of the base payment deterred participation in many watersheds and needs to be discarded. As mentioned previously, the base payment for Tier I was as low as \$0.06 an acre after the additional reduction was applied. The law already establishes the percentage of base payment as five percent for Tier I, 10 percent for Tier II and 15 percent for Tier III of the applicable rental rate payment. No further reductions are warranted.

As you will learn from the mid-October meeting, the drastically reduced base payment for producers participating in Tier I strongly discouraged participation. The base payment rate is clear in the law and was included to provide transparency and is widely understood by producers. USDA has provided no evidence that the base payments at the levels in the farm bill contribute to inflation of land values - one of the justifications provided to further reduce the payments below the farm bill's levels. The land value justification certainly does not explain why base payments to producers enrolled in Tier I are cut by a greater percentage.

We do appreciate USDA including our recommendation that grazing or pasture lands with a cropping capability be treated as crop land for the stewardship base payment. This action correctly placed good pasture and grazing systems on the same level as land that is used for crop production. We also agree with the decision not to require producers to implement practices without payment on land that they do not control. Despite these improvements, we remain concerned about the potential of CSP if USDA continues to require a reduction of the base payment below levels specified in the farm bill.

**C. New Practices Payment:** The IFR arbitrarily capped cost-share payments for new practices to 50 percent and limited the total amount to \$10,000 for the contract, despite the clear language of the statute allowing cost-share payments up to 90 percent and placing no cap on payments for new practices. There is no justification for capping cost-share for practices apart from the overall payment limitation. This approach is counter-productive and clearly violates the intent of the law by making it difficult or impossible for most producers to afford to adopt new practices and participate in CSP. While many producers who succeeded in enrolling in CSP through this first sign up had self-financed their conservation practices, others will be kept out until they can afford to adopt practices or will be forced to wait for funds from other programs that provide greater cost-share for the same practices.

This cost-share cap further takes away the ability of local NRCS officials to provide extra cost-share for those practices most appropriate to maintain or improve local conservation efforts. While we do not have all the data as to which practices were most frequently adopted in the various watersheds, we suspect that producers chose those with the least cost because of the cap instead of those choosing best designed to advance conservation efforts.

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Inexplicably, in implementing the first sign up, USDA totally ignored the directive to provide beginning and limited-resource farmers and ranchers increased cost-share. While NRCS has not yet provided us with information on how many beginning and limited-resource producers entered into CSP contracts, we strongly suspect that the reduced cost-share payments deterred enrollment. This cap on cost-share is further exacerbated by USDA's decision also to limit drastically the other three payments. The final rule must allow for up to the full 75 percent cost share (or 90 percent for beginning and limited-resource producers) for new practices, which would be no greater than other NRCS programs.

Like the proposed rule, the IFR also arbitrarily limits those practices eligible for reimbursement under CSP. Individual producers have different needs specific to their operations. By limiting allowable new practices, some producers could not adopt all the practices necessary to best protect and enhance resources. As we saw in the first sign up, this approach limited producers' ability to take a comprehensive approach to conservation and may inhibit innovation and new conservation efforts.

**D. Enhanced Payments:** Properly implemented, enhanced payments offer the best means to encourage producers to go beyond the minimum required practices and to create and adopt innovative approaches to conservation. Unfortunately, this did not happen in the first sign up.

The IFR contains major limitations on the potential environmental and conservation benefits that can come from the enhanced practices. For example, we heard that in some watersheds producers only adopted one or two enhanced-payment practices because the per-acre cap kicked in, preventing them from benefitting from the adoption or maintenance of additional enhanced-payment practices. In addition, the IFR contained a new rule that limited the enhanced payments to no more than 50 percent of the total tier payment. Given the per-acre cap discussed above, it is likely that not many producers were affected by the 50 percent cap, but the 50 percent cap should be discarded because significant environmental and conservation benefits will come from the enhanced-payment practices.

USDA needs to make transparent the rules for how practices will be categorized in the final rule for purposes of receiving enhanced or other payments. Many producers complained that while some structural practices qualified for enhanced payments, others were considered new practices by USDA. This led to confusion as to when a practice falls under the new practice payment or the enhanced practice payment rules. How a practice is characterized greatly impacts the producers' overall payment.

We do applaud you for including energy practices in the first sign up and urge you to expand the list of eligible energy activities and to encourage producers to develop and implement new energy-conserving activities.

However, the enhanced payments did not go far enough, and in fact, several statutorily

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mandated activities were not covered by the enhanced payments at all. Specifically, enhanced payments should be used to encourage research, pilot and demonstration projects and projects that foster collection and analysis of data. This was not the case in the first sign up. Our understanding is that these activities were excluded even in watersheds that had on-going research and data collection projects.

We urge you to review our letter of March 2, 2004, which contains specific recommendations on how best to administer the enhanced payments.

**E. Maintenance Payments:** The first sign up rules capped maintenance payments at the arbitrary level of 25 percent of the stewardship payment. The CSP maintenance payment was included in the farm bill to reward producers who have already implemented conservation practices and provide them the resources to properly maintain and continue them. According to data we have, it appears that these payments amounted to an average of about three percent of the total payment in contracts in the first set of CSP contracts -- greatly limiting the maintenance element of CSP. We strongly suspect that once we have the complete data from NRCS it will show that these payments were far less than what was intended and did not cover the real costs of maintaining practices.

This arbitrary capping of maintenance payments should not be continued in the final rule. Instead, payments to maintain practices should be based on the real costs of maintaining them, including full management cost, and sufficient to encourage and support the continuation and maintenance of practices.

#### IV. Unnecessary Enrollment Hurdles Will Impede Participation and Conservation

While we recognize that the sign up needed to occur quickly in order to get payments to farmers and ranchers by October 1, the first sign up exposed several unnecessary enrollment impediments. As we predicted in our comment letter of March 2, 2004, the multiple hurdles and layers of complexity in the IFR dramatically discouraged participation far beyond any restrictions that could be justified by the funding limit and thus also reduced environmental benefits.

Many producers complained that the initial information they received discouraged participation and that the subsequent workshops again strongly discouraged producers even from coming into the NRCS office if they could not meet high standards, resulting in a high attrition from the workshops to applications actually filed. Depending on the watershed, many complained that too many producers were eliminated simply because they could not answer "yes" to all of the questions on the self-assessment workbook. They then had no opportunity to work with local NRCS staff to explore if they were truly eligible. Further, many producers complained that the workbook questions, which were drafted at NRCS headquarters, were confusing and often required irrelevant information because they were written at the national level. While we see the value of using self-assessment questions, they must be significantly modified and not used as a device to discourage participation.

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The regulations and procedures should minimize the paperwork burden involved in CSP enrollment and participation. As mentioned earlier, the lack of prior year records kept out many strong conservationists who may have to wait many years before they can even apply again to participate in CSP. In implementing the next sign up, NRCS must work to make requirements more transparent and workable for local producers and eliminate unnecessary steps and hurdles - a move that will relieve the burden on both producers and NRCS staff.

V. Periodic Sign Ups Will Complicate Administration

As shown by problems with a the first sign up, a limited, once-a-year sign-up period complicates the administration and success of CSP. The first CSP sign up was significantly hampered because many eligible producers were in the field, which is inevitable to happen again if USDA continues to use a limited, once-a-year sign-up period for CSP. We encourage USDA to adopt a continuous sign-up approach, like the one used for the continuous Conservation Reserve Program. This would allow producers to apply to CSP at times that are convenient for them and spread the workload on NRCS staff and third-party providers more evenly throughout the year.

CSP provides our nation's farmers and ranchers a golden opportunity to continue and strengthen their role as stewards of natural resources for the long haul. If we want to truly "reward the best and motivate the rest" USDA must issue a final rule that provides the opportunity for all eligible producers to participate in CSP in a reasonable time period and the full financial incentives to realize on this opportunity.

We appreciate your attention to this important matter. Should you have any questions, please contact Matt Hill of Senator Smith's staff at 224-8319 or Alison Fox of Senator Harkin's staff at 224-5929.

Sincerely yours,



Tom Harkin  
United States Senator



Gordon Smith  
United States Senator

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## United States Senate

WASHINGTON, D.C. 20510

March 2, 2004

The Honorable Ann M. Veneman  
Secretary of Agriculture  
200-A Jamie L. Whitten Building  
Washington, D.C. 20250

Dear Secretary Veneman:

As the original Senate co-sponsors of the Conservation Security Program (CSP), we are writing to provide comments on the proposed rule issued in the Federal Register on January 2, 2004. As you know, farmers and ranchers were supposed to be able to enroll in CSP in 2003, and so we strongly urge you to issue regulations expeditiously that will implement and allow enrollment in the program well before the end of fiscal 2004.

It is essential that these regulations faithfully carry out CSP as it was signed into law by President Bush as part of the Farm Security and Rural Investment Act of 2002 (2002 farm bill). CSP provisions in that legislation reflect extensive work, negotiations and suggestions from all interested parties, including thorough consultation with USDA staff. Indeed, CSP as enacted is fully consistent with policy ideas that you favorably discussed in your September 2001 report on food and agriculture policy. For these reasons, CSP is widely supported by farm, commodity, conservation and environmental groups across America.

CSP is unique among USDA conservation programs because it encourages farmers and ranchers to adopt a comprehensive approach to conservation and rewards them for both maintaining sound conservation practices and adopting new ones on working agricultural lands. In return for CSP's financial incentives, agricultural producers deliver increased conservation and environmental benefits to society. These benefits accrue from conserving and enhancing the broad range of resources involved in agriculture: soil, water, air, plants, animals (including wildlife) and energy.

As a voluntary program, CSP enables agricultural producers to adopt sound conservation and environmental practices that help avoid additional regulations. By rewarding farmers and ranchers for their conservation efforts, CSP will provide resources that can help them survive financially and remain on the land, which has the added bonus of stemming urban development of agricultural lands. Since CSP focuses on working land, it does not require removing land from production. And it will significantly boost rural economies through jobs and increased spending in support of conservation efforts. Moreover, as a robust "green payments" program,

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CSP provides a critical foundation for future farm bills and international agricultural trade negotiations.

In sum, if CSP is implemented consistent with the law and Congressional intent, it will deliver enormous environmental and economic dividends to agricultural producers, rural communities and all Americans. According to the benefit cost assessment for the proposed rule, a fully implemented CSP would provide overall net public benefits of \$62 billion over ten years, largely through substantial improvements in our nation's vital natural resources.

Unfortunately, if USDA implements CSP as described in the proposed rule, most of these benefits will be lost due to minimal participation by agricultural producers.

### I. Underlying Assumptions of the Proposed Rule

The proposed rule rests on two basic assumptions or approaches. First, the rule treats CSP as a "capped entitlement" program in which spending may not exceed \$3.773 billion over the 2003-13 fiscal years. Second, the rule evidently assumes that even a very small incentive or reward will cause producers to respond by enrolling in CSP and making substantial conservation efforts. In turn, NRCS exaggerates the potential number of CSP applicants and then throughout the proposed rule creates a multilayered and unnecessarily complex scheme of eligibility hurdles, sharply-reduced payments, geographical limitations and other constraints and restrictions - all designed to quell interest and deter enrollment in CSP.

The proposed rule must now be modified to conform to the provisions of the 2004 Consolidated Appropriations Act, which for fiscal 2005 and subsequent years restores CSP to the form in which it was enacted in the farm bill: a full mandatory program without annual or overall funding limits. In fact, NRCS clearly stated in the proposed rule that it intended to issue a supplement to address this (then-potential) change in the law. With this restoration, CSP regulations must allow all producers who meet the program's conservation requirements to enroll and receive payments, subject only to the funding limit in fiscal 2004.

As we noted in our letter of January 28, 2004, the proposed rule has many problems that make it unworkable for the overwhelming majority of producers. Most of these problems are linked directly to the overall spending limit on CSP, which no longer applies, and need to be discarded. If not changed, the proposed rule would, in effect, extend the repealed CSP funding limit to fiscal 2005 and subsequent years. We suggest that USDA issue an integrated rule for fiscal 2004 and subsequent years as means of ensuring fluid implementation of CSP, while recognizing the need to provide a rapid distribution of funds for fiscal 2004.

It is also critical that NRCS abandon the assumptions, evidently underlying the proposed rule, about how producers will respond to financial incentives and rewards for conservation. In referring to modeling used in the benefit cost analysis, the proposed rule notes, "NRCS also assumes that producers would enroll in CSP if the program provided any positive net benefit to

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them (i.e., even as small as \$1). This assumption does not take into consideration producers' cash flow constraints, which along with other factors could affect participation." Seemingly, NRCS carried this assumption about producer response over into writing the proposed rule – even though, as NRCS acknowledges, it would not be valid for this purpose.

As we show below, through a variety of mechanisms the proposed rule would limit CSP eligibility to only a small fraction of producers and provide exceedingly little reward to the few who are able to enroll. Simply put, the proposed rule downsizes and cheapens CSP to the point that few agricultural producers will be willing or able to enroll. This approach appears to be a repeat of the mistake made in early sign-ups for the Conservation Reserve Program, in which USDA significantly underestimated the payment necessary to gain participation.

If the proposed rule is adopted, the vast majority of American producers who relied on the promise of CSP when President Bush signed the 2002 farm bill into law will be greatly disappointed. This sentiment has been clearly demonstrated at the numerous CSP listening sessions and through the public comments USDA has already received. In addition, if NRCS rules exclude farmers and ranchers from CSP or make it economically impossible for them to participate, our nation will clearly lose tremendous conservation and environmental benefits. It is thus critical that USDA issue a final rule for CSP containing the following suggested modifications.

**II. Eligibility Requirements Will Minimize Producer Participation and Conservation**

The eligibility requirements in the proposed rule severely restrict participation through eligibility requirements that are far more restrictive than the resource conservation requirement in the statute. Congress designed CSP to allow maximum participation by agricultural producers. As stated in the Statement of Managers, "agricultural producers who choose to employ conservation practices should have access to funding." In order to accomplish this goal the final rule must reflect reasonable eligibility requirements. There is no need or justification to impose new layers of restrictions.

**A. Watershed Restricted Eligibility:** Limiting eligibility to producers in watersheds selected by NRCS staff in Washington, DC, using a yet undisclosed manner, will greatly reduce participation and deny conservation where needed. CSP is not simply a watershed program, but instead a program open to all qualifying agricultural producers in all regions of the country.

Plainly, the proposed rule incorporates a watershed approach as a means of reducing producer access to CSP. Since funding is not limited in fiscal 2005 forward, there is no need or justification for using this barrier to eligibility. One of the most valuable features of CSP is that producers across the nation, including those who normally do not use or have access to USDA programs, would have access to conservation funds through CSP. Restricting participation to producers within priority watersheds will deny the majority of producers an opportunity to participate in CSP and thus reduce environmental benefits.

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The statute does not limit participation to select geographic areas, and USDA does not have the legal authority to so limit the program. The Statement of Managers requires "CSP, which is open to all producers for maintaining or adopting practices on private agricultural land... to begin CSP at the full national level as soon as practicable." This leaves no doubt that a full national program open to all qualifying producers - not a limited watershed program - was intended.

It is very unclear how the watersheds will be selected, and our understanding of the selection process has been further complicated by statements of USDA officials. While the proposed rule indicates watersheds will be selected using an undisclosed scientifically-based process, subsequent statements by USDA officials contradict that. According to comments by USDA officials, watersheds will be selected on a rotational basis, once every nine years. Rotating watersheds or selecting only a few each year totally excludes worthy applicants in other watersheds who would have to wait years to even apply for the program and denies reasonable and timely access to agricultural producers. It is also unclear how this rotational approach will maximize environmental benefits, especially if a scientifically-based approach is not used. Such an approach will leave producers guessing when and if they will be eligible and will significantly dampen enthusiasm for a program that was designed to reach producers across the nation.

Notably, the 2002 farm bill specifically eliminated priority watershed areas from the Environmental Quality Incentives Program (EQIP) to put all producers on an equal basis to participate. This change to treat all producers equitably was incorporated into the EQIP final rule. We find it ironic that, as the priority areas were removed from EQIP, very similar scheme is included in the proposed rule for CSP - an open, uncapped program that was never targeted by watershed designations.

It is critically important that the final rule does not adopt the watershed approach and instead allows producers in all geographic areas to apply for the program. Even with a limited source of funds for fiscal 2004, the watershed approach will not work and violates the intent and spirit of the law.

**B. Soil and Water Quality Focus:** The proposed rule identifies water quality and soil quality as national concerns that outweigh all other resource concerns. CSP does not prioritize resources as national concerns, but specifically enables producers to address those resources important to their operation. As the Statement of Managers states, "[t]he Managers intend to assist agricultural producers to concentrate on resource problems, including soil, air, water, plant and animal (including wildlife) and energy conservation on their particular operation using a broad array of conservation practices." The approach put forth in the proposed rule belies the incorporation of all of these resources, except energy, as full resource concerns in NRCS'S Field Office Technical Guide (FOTG).

Important as they may be, designating soil and water quality as the primary national resource concerns not only relegates the other natural resources to second class status, but will

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undermine the nationwide reach of CSP. Specifically, this approach tends to put certain producers and regions of the nation at a disadvantage, depending on the respective status of soil and water quality.

This limited focus on soil and water quality is also inconsistent with previous USDA descriptions of the CSP that recognized the multi-resource approach of CSP. For example, the press release for the Advance Notice of Proposed Rule Making states "CSP is a voluntary program that provides financial and technical assistance to conserve and improve soil, water, air, energy, plant and animal life on tribal and private working lands..." Producers should be allowed to participate fully in CSP with plans that address air, water conservation, energy, plants and wildlife, without the heavy predominance of soil and water quality.

**C. Requirement to Have Already Reached Soil and Water Quality Standards:** The proposed rule unreasonably requires producers to have already reached the quality criteria level (as stated in NRCS conservation handbooks) for both water and soil quality prior to eligibility. This turns the program backwards and denies most of the gains that result from improving environmental practices and performance. Requiring such a high standard prior to enrollment will severely limit eligibility and result in the loss of much of the potential environmental gain.

CSP was designed to encourage maintenance of existing practices and the adoption of new practices, including practices necessary to meet the requirements of each tier by the end of the contract period. To maximize environmental and conservation benefits, the law clearly provides for producers to utilize CSP to reach NRCS quality criteria levels. Conservation compliance is the only valid entry requirement to CSP. The CSP minimum standards require that, by the end of a CSP contract, a producer must meet the quality criteria for one resource appropriate for the operation. For Tier I that requirement would be on a portion of the operation, for Tier II that requirement would extend to the entire operation and for Tier III a producer must meet the quality criteria for all resources pertinent to the operation over the entire operation. Allowing adoption of new practices to reach quality criteria levels through CSP encourages increased conservation which generates significant environmental benefits.

Again, the approach outlined in the proposed rule greatly reduces the number of producers eligible to participate and also directs most producers who cannot self-finance conservation to other programs, like EQIP, before they are eligible for CSP. We strongly object to this approach. CSP was designed to provide an alternative to the existing programs and should be fully open to all qualified producers to maintain existing practices and adopt the full range of new practices. Access to CSP is even more critical since there are insufficient funds for all producers to participate in EQIP. So directing producers away from CSP to EQIP is not a workable solution.

In order to allow for maximum benefit for producers and the public, the proposed rule should be modified, consistent with the law and Congressional intent, to allow producers to participate once they agree to address the significant natural resource concern on their operation



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payments for such areas. As stated in the Statement of Managers, "the Managers recognize that some land use practices may involve alternative uses of the land, such as providing for wildlife habitat or the corners on center-pivot irrigation systems, and expect the Secretary to include these parcels."

### III. Payments Inadequate to Compensate Producers and Deliver Conservation Benefits

The payment structure under the proposed rule is inconsistent with the law and generates such low payments that producers will not participate. CSP funds should be paid to all qualifying producers at fair rates as reflected in the law. Restricting the payments in the manner proposed would severely limit enrollment and completely undermine the substantial potential conservation and environmental benefits of the CSP. We believe this approach unfairly favors producers with considerable financial means over typical producers. The very stringent eligibility requirements and minimal payments would make it economically impossible for the majority of producers to participate.

**A. Base Payment:** We strongly encourage you to maintain the approach under the proposed rule of using state and local rental rates instead of national rates as a means of addressing regional equity and encouraging participation. However, we object strongly to the proposal drastically to cut the base payment. The law requires the Secretary to make a base payment that equals the national rental rate or other rental rate that ensures regional equity (like local rental rates) for all land enrolled in a CSP contract. The law establishes the percentage of base payment as 5 percent for Tier I, 10 percent for Tier II and 15 percent for Tier III.

This proposal to reduce the base payment to one-tenth of the statutory level undermines the purpose of the base payment: to serve as an important incentive to bring producers into the program and reward their conservation efforts. The proposed reduction will only serve to reduce participation and the potential environmental benefits.

The law allows USDA to establish an appropriate rate that ensures regional equity as an alternative to the national rental rate. Nothing in this provision authorizes USDA to "apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments." The law already limits the base payment to no more than 25 percent of the base payment for Tier I and 30 percent limit on the base payment for Tiers II and III.

The base payment was included to provide transparency and is widely understood by producers. USDA's approach turns that on its head by diminishing the value of the base payment that was the clear in the law and shifting the payments to enhanced payments that are very opaque in the proposed rule.

This dramatic reduction in base payment will directly reduce a producer's incentive to participate. Consider, for example, a producer with a Tier II contract covering 1,000 acres in a county with an average rental rate of \$100 per acre. Instead of receiving the annual \$10,000 as

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envisioned under the law, the producer would only receive \$1,000 a year under the proposed rule.

Further, the base payment should cover all land enrolled under a CSP contract, including land with approved conservation practices that address a resource other than the resource of concern identified in a CSP contract. For example, even if the significant resource of concern of the operation is air quality, the base payment should include land on which a producer implements practices that aid wildlife. In this example, the base payment should not be limited to the land on which practices addressing air quality are being implemented.

The final rule should establish base payments utilizing NRCS land capability classes, not strictly based on current land use. For example, land that is fully capable of producing crops, but is now used for pasture or grazing, should be compensated at the cropland base rate. Producers who have placed cropland in permanent cover, a practice with enormous environmental benefits, should not be penalized by limiting their base payment to the rate for grazing or pasture land.

#### B. Cost-Based Payment:

Reduced Payment Rates: The proposed rule restricts the practices eligible for reimbursement and provides payment at a lower rate than those provided for EQIP and other USDA conservation programs. In fact, the benefit cost assessment refers to a rate as low as five percent. This approach is counter-productive and clearly violates the intent of the law by making it difficult or impossible for most producers to afford to participate in CSP.

The law adopted the same approach for CSP as used in EQIP of limiting cost-share to 75 percent of the cost (90 percent for beginning farmers and ranchers) and never envisioned payments reduced below EQIP levels. As the Statement of Managers makes clear, "[t]he Secretary should provide cost-share assistance at a comparable rate as that provided under the Environmental Quality Incentives Program for the same practices."

We believe the decision to reduce the CSP cost-based component is arbitrary and damages the potential for farmers and ranchers to participate in the CSP because it makes doing so too costly. For example, a producer on a relatively small farm who needs to install fencing to protect a riparian area and install water conservation measures, the costs could be more than \$83,000. Under the proposed rule with five percent cost-share, the farmer would have to cover nearly \$80,000 in costs, while under the statute at 75 percent cost-share that amount would fall to less than \$20,000.

There is no justification for providing cost payments for CSP that are less than payments provided under EQIP. If anything, since CSP does not have the limited funding cap of EQIP, the State Conservationist should have the ability to provide higher rates than EQIP if that would generate additional conservation benefits.

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Limitation on Eligible Practices: The proposed rule arbitrarily limits those practices eligible for reimbursement under CSP. This will limit the ability of producers to take a comprehensive approach to conservation and may inhibit innovation and new conservation efforts. All practices approved under a CSP contract should be eligible for the cost component payment, not just those that are implemented to address the significant resource of concern. Further, limitations against payments for equipment that is necessary to carry out an approved conservation practice will make it difficult for producers to implement the practice. To avoid this problem, producers should receive payment to help cover the costs of buying any equipment that is necessary to implement the practice.

The law only prohibits payments for the transport and storage of animal waste, but does not otherwise limit the number or type of eligible practices. All practices available under the FOTG and integral to conservation should be eligible under CSP, including no-till, innovative pest management and wildlife-related practices. The law further contemplates support for the timely incorporation into the FOTG of developing conservation technologies, including those related to new agricultural equipment, data collection and information management and biotechnology that lead to environmental benefits.

The result of severely limiting eligible practices and payments is that for producers to take part in CSP they will have to self-finance their conservation practices or go to other conservation programs, all of which have limited funding. CSP is a stand-alone program, not a stepping stone to or from any other conservation program. Legislative proposals to link EQIP and CSP were considered, debated, and rejected during farm bill consideration.

**C. Enhanced Payments:** Under the law, participating producers are eligible to receive enhanced payments for a variety of activities that exceed the minimum requirements of participation. The five types of activities for which a producer can receive an enhanced payment under CSP are:

1. Implementing practices that exceed tier requirements for a natural resource concern.
2. Implementing practices that exceed tier requirements for state or local resource concerns.
3. On-farm demonstration and pilot projects or research projects.
4. Cooperative watershed or regional resource conservation activities.
5. Assessment and evaluation activities.

As a general rule, we encourage USDA to develop an enhanced payment structure that truly rewards those producers who do more than the minimum required activities. Some guiding principles for the enhanced payments would include ensuring that the enhanced payments are sufficiently large to encourage producers to engage in the desired activities and allowing the State Conservationist the flexibility to provide payments that will ensure adoption or maintenance of environmentally beneficial practices.

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Specifically, we would encourage payments under the first factor for activities that are more comprehensive in scope than what is required for a producer to qualify at a given tier. For example, if a producer needs to address water quality on the operation by constructing buffers and terraces to qualify, but then agrees to manage the buffer extensively in a manner that increases conservation benefits or adds other practices to help with water quality, such as reconstructed wetlands, the producer should receive an increased payment under the first factor. The same argument for an enhanced payment under the second factor would apply if this producer added wildlife practices, like food plots, in an area where wildlife is a resource of concern.

In order to encourage innovation and improved conservation practices, the enhanced payments for factors three and five should cover the full additional costs of participating in any demonstration, pilot or research projects and the full costs of any data collection or assessment activities, including at least some compensation for the value of the farmer's time. Providing payments to cover the full costs of these activities is the best way to ensure that conservation practices will be improved over time and to encourage producer ingenuity. Finally, the rule should provide guidance so the State Conservationist may establish a payment that encourages watershed and regional participation under factor four.

CSP is a locally-led program that will succeed best with state and local input. For that reason, we support strong involvement of state and local entities in determining enhanced payments. The payments should focus on the costs associated with activities eligible for enhanced payments as well as income foregone and the value of producers' time. In addition, it is important to provide incentives where economic costs to producers are not evident. In that case, a measure should be the environmental benefit and the incentive that is needed as a practical matter to secure the effort.

Again, the proposed rule dramatically shifts from objective criteria for base and cost-based payments to what is now a very uncertain, murky category of payment. This is particularly troublesome, since the proposed rule suggests that the bulk of producers' payments will come from the enhanced payments. Without a transparent structure for enhanced payments, it is extremely difficult for producers to know if the payments will be economically sufficient to allow participation in the program. This problem is further complicated by the fact that many producers who wish to address resources of concern beyond soil and water quality will rely heavily on enhanced payments under the proposed rule, so they are left with even more uncertainty of the payment for their participation. For that reason, we strongly encourage USDA to issue a final rule with more concrete details on how enhanced payments will be determined.

Finally, we are concerned that the proposed rule does not reference the practices that exceed minimum requirements and involve a change in land use, such as resource-conserving crop rotations, managed rotational grazing systems, or conservation buffers as eligible for an enhanced payment. The final rule should provide guidance specifically addressing these practices.

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#### IV. Unnecessary Enrollment Hurdles Will Impede Participation and Conservation

While we recognize that implementation of CSP will generate additional work for NRCS employees and technical service providers, we fear that the multiple hurdles and layers of complexity in the proposed rule will dramatically discourage participation and consequently reduce environmental benefits. USDA included significant hurdles to restrict eligibility and reduce participation as a means to limit expenditures. With the lifting of the funding cap, these impediments need to be removed.

As described in the proposed rule, if a producer meets the onerous eligibility requirements that vary with each proposed sign-up, the producer must then complete a self screening questionnaire for each land use to be enrolled. If the producer passes the self screening questionnaire successfully, then the producer must complete a benchmark condition inventory. After that step, the producer must satisfy the sign-up criteria, including information about enhancement activities. After all these steps, the producer develops an application to the program. If NRCS determines that the producer and the level of resource treatment meet the requirements established for that particular sign-up (because they vary with each sign-up), NRCS places the producer's application in a tier of participation and an enrollment category. At this point, NRCS conducts a follow-up interview to confirm the application information and then NRCS staff works with the applicant to complete a CSP plan. Once NRCS verifies the information, the producer can enter a CSP contract with NRCS.

Producers should not be required to go through these multiple unnecessary steps prior to enrolling in the program. Instead, we urge you to adopt a more streamlined approach that requires an application, including a resource inventory, a CSP plan and a CSP contract. Finally, while we support the idea of allowing producers the option to complete a resource inventory on their own, producers should also have access to assistance through their local NRCS office.

The statutory cap on technical assistance (TA) of 15 percent of the total funds available does not justify dramatically limiting enrollment as claimed by USDA. Prior to the 2002 farm bill, TA for EQIP was capped at 19 percent. EQIP covers TA for more expensive new practices. Since a larger portion of funds are required for TA when implementing new practices than are required for maintaining existing practices, which are expected to make up a sizeable percentage of the practices covered by a CSP contract, the 15 percent cap should fully cover TA needs in CSP.

Further, once the proposed rule is corrected to reflect full funding of CSP and so producers receive full payments as anticipated under the law, the 15 percent cap on funds for TA out of the total funds will not be restrictive or impede enrollment. Using the example previously used with respect to the base payment, a base payment of \$10,000 will allow expenditures of up to \$1,500 for TA, but the proposed \$1,000 base payment would leave only \$150 for TA. While the base payment is only a portion of the total contract, this example clearly demonstrates the need for full payments required under the law. Finally, we expect USDA to use the same

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approach as used in other conservation programs in determining which activities are charged as TA against CSP funds.

#### V. Periodic Sign-ups Will Complicate Administration

In order to maximize participation and consequent environmental benefits, producers should have the ability to sign-up for CSP any time of the year. Because the time demands of agricultural production vary seasonally around the nation, a single sign-up period would limit producers' access to CSP. Using a continuous sign-up approach gives USDA and producers flexibility and reduces the burden on NRCS staff and third-party providers by enabling them to spread their workload more evenly throughout the year.

#### VI. Resource Standards for Energy Should Be Developed

The proposed rule contains very little reference to energy as a natural resource of concern. Energy was specifically included so NRCS will allow and encourage producers to develop CSP practices that help conserve energy. Such practices may, for example, include the use of a windmill to help supply energy to run an irrigation pump or the production or use of biomass that may also serve to protect or enhance other natural resources. The final rules should support a broad range of renewable energy production and energy conservation practices through base, cost and enhanced payments. However, without developing reasonable technical standards, minimum requirements for energy should not be applied as a tier requirement, such as for Tier III. Energy practices should be developed and fully incorporated into the NRCS FOTG and handbooks as soon as possible.

#### VII. CSP and Organic Plans Should be Coordinated

As a practical matter, we are concerned that the proposed rule is silent on how USDA intends to handle plans of organic producers who are certified under USDA's National Organic Program (NOP). The rule should include a clear mechanism for coordinating participation in NOP and CSP. USDA staff should deliver these complementary programs in the most farmer-friendly, least burdensome fashion possible. We encourage the Agriculture Marketing Service and NRCS to coordinate on this issue to ensure that the final CSP rule includes a reasonable and practical approach for allowing NOP certified producers to utilize their plans in the CSP enrollment process.

We strongly believe that CSP offers great promise for farmers, ranchers, the environment, wildlife and the general public and we hope that these suggestions will help USDA implement CSP in a manner that fulfills that promise. We are disappointed that the proposed rule as it stands will deprive American farmers and ranchers of the full opportunity to participate in a new, voluntary program that offers tremendous societal benefits. We hope that the final rule will more properly reflect the law and be issued in a timely manner to allow for successful implementation

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in fiscal 2004. It is evident from comments already submitted, and from the many listening sessions held around the country, that substantial changes are needed. We strongly suggest that USDA publish without delay a final rule that fully reflects these changes.

We appreciate your attention to this important matter. Should you have any questions, please contact Matt Hill of Senator Smith's staff at 224-8319 or Alison Fox of Senator Harkin's staff at 224-5929.

Sincerely yours,

  
Tom Harkin  
United States Senator

  
Gordon Smith  
United States Senator

cc: Conservation Operations Division  
Natural Resources Conservation Service  
P.O. Box 2890  
Washington, DC 20013-2890