649

Mississippi Association of Conservation Districts, Inc.
P. O. Box 23005, Jackson, Mississippi 39225-3005
Phone: 601-354-7645 • Fax: 601-354-6628

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1st Vice President

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2nd Vice President

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March 1, 2004

Mr. David McKay
Conservation Planning Team Leader
Conservation Operations Division
USDA NRCS
P.O. Box 2890
Washington, DC 20013-2890

Email: david.mckay@usda.gov, Attention: Conservation Security Program

Re: CSP Rules Comment by the Mississippi Association of Conservation Districts

Dear Mr. McKay:

The Mississippi Association of Conservation Districts (MACD) welcomes the opportunity to offer comments regarding the initial implementation of the Conservation Security Program (CSP). MACD appreciates the effort NRCS has put into drafting the proposed rule.

Before commenting on possible changes we would like to see, I first want to express our whole hearted support for two provisions of the rule. NRCS's definition of an agricultural operation is a positive change. The underlying goal of "rewarding the best and motivating the rest" is exactly what MACD feels the CSP is intended to do.

It is our understanding that the CSP was originally written as an uncapped entitlement program but was changed to reflect a 10 year funding cap. We feel NRCS did an admirable job of trying to craft a rule for a huge program facing severe financial restrictions. The passage of the 2004 Appropriation Bill has reopened the possibilities we believe the CSP rule should embrace. The CSP rule should provide for a widely available program funded at a level to reward good stewards. In order for CSP to reach its full potential,we believe the following changes should be considered.

*Elimination of the priority watershed approach to implementation. The use of the priority watershed concept, while understandable, should be eliminated. Enrollment in the program should be open to all eligible producers on a national basis. Watershed boundaries could still play a valuable roll in enhancement activities.

*Tenants should not be penalized. The issue of payment between landlord and tenant is a matter to be controlled by the land lease. In addition, the idea of disallowing land not controlled for the life of the contract while considering it as part of the contract site and requiring maintain ace at the contract level is completely unfair.

*Every effort should be made to allow tailoring of the CSP program to address state needs. State Conservationists should be given sufficient latitude to address their needs but should also be required to consult with local stakeholders.

*The national per-acre rental rate would certainly address the disparity of rental rates currently in place in Mississippi. We believe the rule proposal allowing the cutting of the base should be removed.

*We have always supported 75% cost share payments. Cost share payments should be at the 75% allowed by the statute. We believe any approved practice contained in the Field Office Technical Guide should be eligible.

Thanking you again for the opportunity to comment, I remain

Sincerely yours,

Jack H. Winstead

Jack H. Winstead
President

Pennsylvania
Association for
Sustainable Agriculture

114 West Main Street
PO Box 419
Millheim, PA 16854
(814) 349-9856
fax (814) 349-9840
www.paseafarming.org

February 26, 2004

Conservation Security Program Comments
ATTN: David McKay
NRCS Conservation Operations
PO Box 2890
Washington, DC 20013-2890
Email: david.mckay@usda.gov
Fax 202-720-4265, attention David McKay

Dear Mr. McKay,

As the Executive Director of Pennsylvania Association for Sustainable Agriculture (PASA), I am writing in support of CSP as a nationwide conservation program focused on supporting farmers and ranchers' efforts to conserve and improve natural resources.

Pennsylvania Association for Sustainable Agriculture (PASA) is a nonprofit organization working to improve the economic and social prosperity of Pennsylvania food and agriculture. We work with the farmers that grow our food, the consumers that eat the food, and those concerned with the ecological well-being of our environment and natural resources. As a state-wide, farmer-based organization in Pennsylvania, we believe CSP can provide a valuable means for helping farmers to conserve and improve natural resources, but only if the proposed rule is changed to reflect the original intent of the program.

PASA requests that USDA immediately issue a supplement to the rule, which would be open for public comment for 30 days. The proposed rules, issued on January 2, 2004, are not consistent with the law authorizing the CSP, nor with the funding allocated by Congress restoring CSP to its uncapped, national entitlement program status.

PASA believes the following changes are critical to the success of CSP:

1. The USDA's proposed rules do not provide adequate payments for environmental benefits being produced by farmers currently practicing effective conservation. CSP base payments should be set at the local rental rates based on land capability without the 90% reduction proposed by USDA. Enhanced payments should reward the most environmentally beneficial systems and to the maximum extent possible pay for results. The enhanced payments should not be treated as cost-share but rather as real bonuses to reward exceptional performance.

2. CSP needs to recognize and reward resource conserving crop rotations and managed rotational grazing as proven conservation farming systems that deliver environmental benefits to society. Both are specifically mentioned for enhanced payments in the CSP statute. The final rule should highlight substantial enhancement payments for these systems, as well as payments for management of existing practices.

3. USDA should not penalize farmers for shifting former cropland to pasture as part of a managed grazing system. Former or potential cropland that is pastured and put into a managed rotational grazing system must receive equal payment rates to other cropland, and not the lower rate of pastureland. The rules should establish base payments based on NRCS land capability classes, not current land use.

4. CSP should allow farmers with USDA-approved organic certification plans under the National Organic Program to simultaneously certify under both the National Organic Program and CSP, if they meet the standards of both.

5. NRCS should utilize the 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. All CSP payments should be attributed to real persons (not various corporate or business entities). Payment limits set in the law ($20,000 per year for Tier 1, $35,000 per year for Tier 2, and $45,000 per year for Tier 3) must be maintained.

6. NRCS' proposed restriction to one-time contracts is contrary to the entire purpose of the CSP to secure ongoing conservation of our nation's national resources.
NRCS' proposal that CSP contracts in general not be renewable, except in special circumstances, conflicts with the law, which leaves it up to the farmer to decide if he or she wants to renew the contract, which USDA would renew unless the farmer was not fulfilling the contract. CSP contracts should be renewable, as part of an ongoing program, and not limited to one-time contracts.

7. USDA's "preferred approach" in the proposed rule would severely prevent most farmers from gaining access to the CSP. USDA must adhere to the law, and to the recently appropriated full funding of CSP by Congress, and make CSP available nationwide to all farmers practicing effective conservation, not just to a few "selected watersheds" and undefined "categories."

Thank you for your consideration of these critical components of the Conservation Security Program,

Sincerely,

Brian Snyder
Executive Director

Allegany Soil Conservation District

11602 Bedford Rd NE ♦ Cumberland, MD 21502 ♦ 301-777-1747

February 27, 2004

Mr. David McKay
Conservation Planning Team Leader
Conservation Operations Division
USDA NRCS
P.O. Box 2890
Washington, DC 20013-2890

RE: Conservation Security Program

Dear Mr. McKay:

Following are some comments on the proposed rule to implement the 2002 Farm Bill Conservation Security Program. We commend NRCS for developing a proposed rule in the face of the legislative changes that were made to the program following its enactment.

We have several concerns relative to the proposed rule. We understand that during the development of the proposed rule, changes were made to the statute that altered it from an uncapped entitlement program, to a capped entitlement, to be funded at approximately $3.8 billion over 10 years. Given that change, NRCS proposed a much more limited program that would be available to a relatively small number of producers in highly targeted watersheds. The proposed rule also placed significantly lower limits on cost-share rates and base payments than were allowed in the statute; restricted the number and types of practices that would be eligible for payment; and required producers to address resource concerns prior to enrolling in the program.

The enactment of the 2004 Consolidated Appropriations Bill, however, restored the CSP to an uncapped entitlement as it was originally written. Given that fact, we strongly urge NRCS to prepare a rule to implement the program as originally intended and without the severe restrictions in the currently proposed rule. The principal issues that need to be addressed in the supplement to properly implement the CSP as an uncapped entitlement include:

- allowing open enrollment to all eligible producers nationwide with no preference for producers in targeted watersheds

- providing the full cost-share, maintenance and base payments as provided for in the statute
- removing the limitation on the types of practices eligible for payment
- making the CSP a true rewards program by allowing producers to use CSP to address resource concerns after enrollment

Thank you for the opportunity to comment on the CSP proposed rule.

Respectfully submitted,

Lee Heavner

Lee Heavner, Chair
Allegany Soil Conservation District Board of Supervisors

Sustainable Ag. Coalition

March 2, 2004

David McKay
Conservation Operations Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013-2890

Re: Proposed Rule for the Conservation Security Program

Dear Mr. McKay:

This letter and attachment contains the comments and recommendations of the Sustainable Agriculture Coalition in response to the Proposed Rule for the Conservation Security Program (7 CFR 1469), published in the Federal Register on January 2, 2004 (Fed. Reg. Vol. 69, No 1, pages 194-223).

As you know, the Sustainable Agriculture Coalition played a central role in the development and passage of the Conservation Security Program (CSP), and continues its efforts at outreach to farmers and ranchers and public education during the 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 US 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 Technology, Northern Plains Sustainable Agriculture Society, Ohio Ecological Food and Farm Association, Organic Farming Research Foundation, and the Sierra Club Agriculture Committee.

We believe the public investment in the CSP to assist farmers and ranchers who develop and maintain conservation systems that solve critical natural resource concerns will pay big dividends by fostering substantial net public benefits in the form of healthy and stable soils, cleaner water and air, greater biodiversity, better wildlife habitat, increased carbon storage, and restored and enhanced wetlands and prairie. By taking a conservation systems approach rather than a single practice approach, by requiring that real resource problems be solved to a sustainable use level, and by emphasizing cost-effective management practices, resource enhancement, and monitoring and assessment, the CSP marks the most comprehensive and rigorous federal agricultural conservation incentive program to date. CSP payments, capped at a modest amount per farm per year and fully compliant with our international trade obligations, are also a prime model for the type of farm program that will garner and maintain public support. We urge you to craft a revised proposed rule and implementation plan worthy of these vital and widely supported goals.

In our view, nothing is more critical for NRCS right now than to deliver this program in a comprehensive, coherent, and defensible manner. This effort, or lack thereof, will set the tone and establish the baseline for all future evolutions of the effort to develop a US farm policy and program serving the public interest in environmental improvement and landscape amenities and the interests of farmers and ranchers in recognition and income support for their contributions in conserving resources and enhancing long term food security. In a very real sense, the agency's reputation for being able to deliver a 21st century program is at stake in this rulemaking and implementation process.

Unfortunately, the proposed rule falls seriously short of meeting statutory requirements and policy goals. After repeated and long delays in this rulemaking process, now over a year behind the schedule dictated by Congress in the 2002 Farm Bill, we trust that you will give careful consideration to our comments and issue a final rule that comports with the law, implementing a comprehensive nationwide entitlement program with genuine stewardship incentives and payments for conservation benefits and environmental services already being delivered. We hope the program will be in place by this summer so that interested farmers and ranchers, wherever they reside, will be able to begin the sign-up process as their current growing season comes to a close.

Thank you for the opportunity to comment and for carefully considering our views and recommendations.

Sincerely,

Ferd Hoefner
Washington Representative

cc:

Deputy Chief Jose Acevedo

Associate Director for Agriculture & Public Lands David Anderson

Acting Cons Ops Division Director Thomas W. Christensen

Chief Economist Keith J. Collins

Chairman James L. Connaughton

Special Assistant to the President Charles F. Conner

CSP National Manager Craig Derickson

Natural Resource, Energy, Ag Branch Chief Arthur G. Fraas

Deputy Under Secretary R. Mack Gray

Associate Deputy Chief Carole Jett

Chief Bruce I. Knight

Ag Branch Chief Adrienne Erbach Lucas

OMB/OIRA Margaret Malanoski

Deputy Secretary James R. Moseley

OMB/OIRA Clay Ogg

Associate Director Marcus Peacock

Under Secretary Mark E. Rey

Secretary Ann M. Veneman

Associate Chief Thomas A. Weber

OMB Ag Branch Jason Weller

SUSTAINABLE AGRICULTURE COALITION

COMMENTS AND RECOMMENDATIONS
With respect to the
Proposed Rule for the Conservation Security Program (7 CFR 1469)
Federal Register, January 2, 2004 (Fed. Reg. Vol. 69, No 1, pages 194-223)

Contents

I. Preliminary Comments, including comments on EA – starting on page 4
II. Major Comments on Program Design – starting on page 11
III. Major Comments on Payment Structure and Limitations – starting on page 23
IV. Major Comments on Program Elements of Special Relevance to Sustainable Agriculture Practitioners – starting on page 31
V. Comments on Provisions Dealing with Beginning and Limited Resource Producers – starting on page 38
VI. Section-by-Section Language Recommendations (forthcoming) – page 40
VII. NRCS Form Comment Sheet – starting at page 41

I. Preliminary Comments

A. Proposed Rule Is Inconsistent With the Law

> ***Recommendation*: We urge you to keep your promise and issue no later than the end of this month a supplemental, revised proposed rule that comports with the law (including the return of the CSP to uncapped entitlement status as a result of the FY 04 omnibus appropriations act), with a not longer than 30-day public comment period, and with a commitment to produce a final rule by summer.**

The proposed rule falls substantially outside the bounds of the letter and spirit of the law, failing to provide a nationwide, comprehensive, sustained program available to all farmers and ranchers in all regions of the country who are practicing effective conservation. The program contemplated by the proposed rule misses its mark by a wide margin, bearing only faint resemblance to the statute. The proposed rule's significant deficits indicate that collecting public comment on it will confound the record and frustrate meaningful agency review of comments required by the Administrative Procedures Act. If the record before the agency is confused and incomplete, it will greatly complicate the task of preparing a final rule and program manual in a timely fashion.

We were therefore hopeful that the agency would issue a supplemental revised proposed rule as it claimed it would in the prefatory comments to the proposed rule, assuming passage of the FY 04 omnibus appropriations bill: *"Pending the enactment of the legislation, NRCS intends to*

publish a supplement to this proposed rule."[1] The President signed that bill into law on January 23, returning the CSP to its full entitlement status. In the weeks that followed, despite massive public support for the issuance of the supplemental, the Administration failed to act. Then, on February 11, the Under Secretary stated publicly at the Des Moines listening session that there would be no supplemental revised proposed rule during the current comment period and that a supplemental rule is at best one of five possible strategies that might be employed after this comment period is over.

The failure to provide a supplemental revised proposed rule for public comment consistent with the statute is resulting in another serious time delay, of which there have been many already. We note that as of today the final rule for the CSP is now 385 days overdue based on the statutory deadline, and delay is almost certain to continue for months more to come.

The statute provides that for each of the fiscal years 2003 through 2007, the Secretary shall establish and carry out the CSP.[2] The Secretary did not establish and carry out the CSP in FY 2003, and it now looks doubtful she will carry out the CSP in anything but a small fraction of FY 2004 if at all. Farmers and ranchers practicing exceptional stewardship who would be drawing CSP existing practice payments and enhancements payments for such efforts have thus been denied one and probably two full years of benefits due to them.

We continue to urge you to keep your promise and to issue with all due haste a revised proposed rule for public comment that tracks the law, without further long delay and with a no longer than 30-day public comment period. Key issues that must be addressed in the revised proposed rule to bring it into harmony with the statute and congressional intent include but are not limited to:

- removal of provisions to limit participation to particular, rotating watersheds and to particular as yet unspecified categories of farmers and ranchers;
- switching back to a continuous sign-up process, a procedure which not only would be farmer and customer-friendly but would also help spread the technical assistance workload over a broader timeframe;
- thoroughgoing revision of the base, cost-share, and enhanced payment structure so the program offers genuine cost-share assistance plus authentic stewardship incentives and payments for conservation benefits currently being delivered;
- equitable treatment of resources of concern such that tier one and two participants may choose from among major, actual resources of concern for their farm and locality, all tiers must reach the relevant RMS quality criteria within the contract period, and no participant is required, as a condition of eligibility, to have already fully achieved the relevant RMS quality criteria;
- explicit incorporation of the statutory provision for enhanced payments for resource-conserving crop rotations, managed rotational grazing, and conservation buffers;
- removal of the prohibition on contract renewals and incorporation of the statutory mandate that contracts in good standing are renewable at the option of the producer;

[1] 69 Fed. Reg. 194, 197 (2004).
[2] 16 U.S.C. § 3838a(a)

- removal of the provision for enforcing CSP requirements on land for which no CSP payments will be made;
- inclusion of a direct attribution of payments provision to prevent payment limitation abuse; and
- inclusion of the full range of NRCS-approved conservation practices as well as interim practices and pilot-testing of new, innovative practices.

B. FY 2004 Funds Should Be Used on First Come, First Served Basis

***Recommendation*: For FY 04 only, NRCS should approve contracts based on their application date, holding over the remaining approved contracts and awarding them at the beginning of the next fiscal year, provided there are no substantial changes in the producer's situation or offer that would require a major revision in the Plan or Contract.**

We do not believe the law allows USDA to select contracts from some eligible producers, while denying CSP contracts to other eligible producers. USDA should set reasonable eligibility standards, set a high environmental bar, and approve all submitted CSP Plans that meet those standards.

However, since Congress chose to limit funding for the current, initial fiscal year, if NRCS receives more approved CSP Plans than it can fund in the current fiscal year, it should approve contracts for current year funding based on their application date, holding over the remaining approved contracts and awarding them at the beginning of the next fiscal year. Those approved CSP Plans would be first in line to receive contracts beginning October 1, provided there are no substantial changes in the producer's situation or offer that would require a major revision in the Plan or Contract. This approach gives successful applicants assurance that they will eventually get a contract, it lets NRCS know they are not wasting their time reviewing conservation plans, it keeps producers from getting discouraged because only limited percentage of eligible and qualified applicants actually get funded, and it gives a clear show of demand for the program to Congressional appropriators.

Starting October 1, 2004, there is no longer any budget cap on the CSP entitlement program. In our view, this is how the program should remain. Should a cap nonetheless be placed on the program in any particular random outyear, we strongly recommend the same procedure outlined above for FY 04 be followed. If, on the other hand, a long-term cap is placed on the program, we recommend the program accept applications in order of tier and enhancement factors, as outlined in Section II B below.

Assuming we are successful in fighting off further attempts to cap the program, 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 previously noted in our comments on the advanced notice of proposed rulemaking, there are many elements of the CSP statute which, 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."*[3]

"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 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.

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[3] Sustainable Agriculture Coalition Comments on CSP ANPR, page 6 (2003)

• 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."[4]

C. Economic Analysis of Eligibility and Participation Is Faulty

We intend to supply you with a separate document in the near future with our thoughts on how to improve the Proposed Rule Benefit Cost Assessment. We will include in that document public information from NRCS, ERS, and NASS that fundamentally contradicts many of the basic, underlying assumptions used to produce the draft analysis, including completely wild assumptions about the number of producers and acres eligible for the program.

We will question the assumptions made under all four analyzed alternatives that Tier 3 applications predominate. Interestingly, the latest Administration budget projection for the program makes the opposite assumption, suggesting some change of analysis has already taken place. We will question how reducing cost share from 75 percent to 5 percent can possibly result in virtually no decline in participation, as the document assumes. We will question a variety of other assumptions in the analysis, such as the 1.5 practice average used to assess a program that is predicated on a whole farm plan and conservation system approach. Perhaps most importantly, based on the latest public information provided by the agency on program cost estimates just last week, we hope to analyze either the technical assistance time estimates in the Assessment, or preferably more current information, assuming the agency is willing to share it.

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

D. Environmental Assessment Is Inadequate

> ***Recommendation*: We recommend that NRCS meet the statutory and regulatory requirements of the National Environmental Policy Act by undertaking an adequate environmental assessment of reasonable alternatives for implementing the Conservation Security Program. One necessary reasonable alternative is implementation of a full, comprehensive, nationwide CSP as authorized in the 2002 Farm Bill. We further recommend that, if NRCS is adamant about including provisions for a capped program, the agency should include in the EA an analysis of feasible and prudent alternative for a restricted program based on the CSP's tiered structure and enhancement factors specified in the CSP legislation.**

In order to be legally adequate pursuant to the National Environmental Policy Act, a properly drafted Environmental Assessment (EA) must include a discussion of appropriate alternatives to the proposed project.[5] In the draft EA for the CSP Proposed Rule, NRCS states that the need to which NRCS is responding in preparing the EA is the proposed action *". . . to implement the CSP as authorized by Congress."*[6] But in the statement of alternatives, NRCS indicates that it is considering only two alternatives in the EA: the "no action" alternative of no implementation of CSP and the alternative of implementing the CSP according to the proposed rule.[7] Federal courts have found that EAs that purport to cover only the "no action" alternative and the agency's preferred alternative are legally inadequate.[8]

Clearly, a legally necessary, reasonable alternative, which must be included in the EA, is the CSP as authorized by Congress without limitations. This would be an analysis of the program without the numerous restrictions and additional requirements for CSP participation that are not authorized by Congress but are included in the proposed rule, such as limited watershed eligibility and additional vaguely delineated intensity factors for the CSP Tiers. This alternative should also include cost-share payment rates equivalent to those provided in the Environmental Quality Incentives Program rather than the severely reduced cost-share rates set by the CSP proposed rule. Without including this alternative, NRCS fails to meet the requirements of NEPA to inform the agency itself, Congress, and the members of the public about the very proposed action highlighted in the EA, that is the implementation of CSP as authorized by Congress. This information is crucial for any future congressional debates and agency action concerning the funding and scope of the CSP.

Furthermore, if NRCS is adamant about including provisions for a capped program with restrictions on participation greater than those authorized legislatively, we recommend that NRCS consider additional alternatives to those provided in the proposed rule. During CSP listening sessions and meetings with stakeholders, NRCS has clearly indicated that it has contemplated other ways to implement the CSP. These include limiting participation based on a

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[5] 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b).
[6] EA at p. 5.
[7] EA at p. 6.
[8] See, e.g. Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002)(holding that an agency acted arbitrarily and capriciously in issuing an EA that discussed only the no action alternative and the agency's preferred alternative).

"first come, first serve" basis, limiting participation by giving higher Tier III applicants priority over lower Tier applicants, and a priority for applications that include the complete list of specific enhancement factors provided in the CSP legislation. The EA should include an analysis of these feasible and prudent alternatives for restricting program participation.

We also note that overall the environmental analysis that is provided in the draft EA is wholly inadequate. The document provides a great deal of general background discussion of potential adverse environmental effects arising from agricultural operations but provides very little analysis of how the CSP might address these problems. In addition, much of the analysis is based on assumptions that are contrary to what NRCS is proposing for CSP, even though the agency purports that EA is analyzing the preferred alternative of the proposed rule. For example, the analysis includes detailed attention to wildlife habitat but in the proposed rule, NRCS has not included wildlife habitat in its selected nationwide resources of concern. The analysis also ignores the severe restrictions on base payments and cost-share rates and, therefore, fails to consider whether alternative payments and rates could result in significant environmental improvement.

In addition, in the proposed rule NRCS states that it has decided to withhold from the public critical information about the agency's intentions regarding the design of the CSP by not including this information in the proposed rule. This critical information includes the specific watersheds that would be selected for inclusion in a limited CSP, what the priority enrollment categories will be, and a clear delineation of "intensity factors" for enhanced payments. Without this information, a sound environmental analysis of the CSP is not possible. The choice of NRCS to defer informing the public of these decisions until almost the moment it calls for program applications constitutes "project chopping" which prevents the public, members of Congress, state and federal agencies, and others from getting a complete picture of the NRCS proposal for implementing CSP.

II. Major Comments on Program Design

A. Restricting Eligibility to Selected Watersheds Is Misguided and Contrary to Law

> ***Recommendation*: The rule should be modified by removing all references to limiting enrollment opportunities to producers in certain watersheds. 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 proposed rule would limit CSP eligibility to farmers and ranchers within a restricted number of watersheds. The CSP, however, is not a watershed program. There is not a single reference to such a notion in the statute or the legislative history. It was not an idea ever contemplated with respect to the CSP until the rulemaking stage. In fact, to the contrary, the record 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 proposed watershed approach is contrary to the law, and would result in vastly lower participation levels, far less progress in solving natural resource problems, and a significant possibility of politicizing the program. The CSP should be based on results, not geography.

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 on land eligible for the program.[9] The statute specifies the broad range of private agricultural land eligible for the program and includes four specific exclusions of land that is ineligible.[10] The exclusions do not include selection based on priority watersheds.

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 you know, 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 proposed CSP rule takes a nationwide, comprehensive program and tries to turn it into a watershed program. Whatever the merits or demerits of the final EQIP

[9] 16 U.S.C. § 3838a(b)(1)
[10] 16 U.S.C. § 3838a(b)(2) and (3)

rule from this standpoint, the decision to radically change EQIP is not a valid excuse to then turn the tables on the CSP.

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 conservation resources on watersheds – the Partnerships and Cooperation provision (Section 2003) of the 2002 Farm Bill.[11] 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 geographic areas.[12] 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.

The most recent Administration budget projection for the CSP reveals a design for the proposed watershed approach that would have producers in each watershed in the country eligible to enroll every ninth year. In our view, in addition to being contrary to the law, this is an utterly unworkable, arbitrary, and discriminatory program design. This rotation proposal would first have farmers wait until the year their watershed is eligible. Then they would find out if they happen to be in one of the lucky categories of producers who get to participate, categories that are not announced according to the proposed rule until the sign-up period begins. Then they may well be directed to use other programs such as EQIP or WHIP to access cost-share dollars to implement practices needed for them to become eligible for CSP. At this point, they presumably are to join the waiting list for these backlogged programs and, by the time they are eligible, wait for another multiyear period before having the next opportunity to enroll in the CSP. This proposed design is unworkable and should be scrapped in its entirety.

B. Limiting Participation to Special Categories of Producers Is Also Contrary to Law

> ***Recommendation*: The 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. If a funding cap should ever be re-imposed on the program, the agency should address any shortage of funds relative to eligible applicants by accepting applications in order of tiers and enhancement factors.**

The proposed rule would limit CSP eligibility to particular, unspecified "categories" and "subcategories" of farmers and ranchers. Again, this decision is unsupported by the clear language of the statute. Eligible producers are clearly defined by the law, and to participate, eligible producers must meet the statutory requirements of the program, including the minimum requirements for each tier determined and approved by the Secretary.[13] The Secretary has the

[11] 16 U.S.C. § 3843(f)
[12] 16 U.S.C. § 3843(f)(2)
[13] 16 U.S.C. § 3838a(d)(6)

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.[14] The Statement of 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."*[15]

The proposed rule, 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)***.[16] The prefatory comments on enrollment categories further states they *"are intended to **identify and prioritize** eligible producers...for funding" **(emphasis added)***.[17] Clearly, sorting out, classifying, and prioritizing applications in this fashion is precisely the type of ranking system prohibited by the statute.

The nature of the proposed categories is left completely undefined by the rule, making it difficult to impossible for the public to comment on the proposal intelligently. The prefatory comments offer only this small and unenlightening clue: *"NRCS will develop criteria for the construction of the enrollment categories such as the soil conditioning index, soil and water quality conservation practices, and grazing land condition."*[18]

Because this critical portion of the proposed rule is undeveloped, the proposed rule states that NRCS would *"receive public comment"* and that *"the criteria for application and selection would be transparent by defining through a public notice and posting on the web the watershed eligibility criteria and enrollment categories for funding."*[19] Such multiple rounds of notice and comment rulemaking will not only further delay an already much delayed program, but will also present an undue burden on members of the public interested in commenting on the rule for this program.

The prefatory comments to the proposed rule make it clear 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 FY 03 appropriations act. This cap has now 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.

The agency asks for the public to suggest alternative approaches to program design assuming the imposition of a cap. While we strongly oppose the imposition of a cap, were one to occur the

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[14] 16 U.S.C. § 3838c(f)
[15] H. Rpt. 107-424, page 478
[16] 16 U.S.C § 3838(3) "Enrollment categories"
[17] 69 Fed. Reg. 210 (2004)
[18] 69 Fed. Reg. 198 (2004)
[19] 69 Fed. Reg. 200-201 (2004)

reasonable response, in our view, 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 all eligible producers in all tiers will be able to participate because the cap placed on the CSP in 2003 will remain permanently lifted after September 30, 2004. 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 cap situation would be 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"*.[20] 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.

C. Limited Enrollment Periods Is Not Farmer or Staff-Friendly

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

The proposed rule envisions infrequent, limited duration CSP enrollment periods, rather than the continuous sign-up process envisioned during congressional debate on the farm bill. This could make it difficult for farmers to sign-up if the limited period falls within planting and growing seasons. It would also concentrate requests for NRCS technical assistance in a limited period rather than spread out over the course of a full year, putting undue pressure on staff. A "stop-and-go" CSP could also become subject to political manipulation. Without a cap, there is no valid reason for the CSP with limited, restricted sign-ups. Even with a cap, the CSP should function in the same manner as the capped EQIP program, with a continuous application process and periodic selection procedure.

D. Minimum Conservation Requirements Are Unbalanced and Contrary to Law

***Recommendation*: The rule should be modified to retain high environmental standards, but to allow farmers and ranchers to achieve those high standards during the initial contract period. Achievement of the full range of RMS quality criteria should not be the eligibility criteria, but, as the law requires, the outcome of the CSP conservation plan. The minimum bar to be eligible for enrollment should include having reduced erosion to the soil loss tolerance level or below and additional minimum standards as outlined below.**

[20] 16 U.S.C. § 3838a(c)(2)

In all its conservation planning assistance and all 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 proposed rule 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 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. It would be our hope that upon finalization of the CSP rule, NRCS would return to the EQIP rule and amend it to bring some coherence and at least mild conformity to the agency's now widely divergent and inconsistent positions.

Despite our support for the recent efforts to improve the quality criteria and consider increased management intensity, we nonetheless believe the proposed rule sets the entry point for the CSP too high. According to the proposed rule, 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 proposed rule would require every single NRCS conservation standard to have been met prior to enrollment for Tier 3 participants. The proposal would restrict access to only those farmers 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 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.[21] 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.

We do believe, however, 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."*[22]

We concur in part with the decision made as part of the 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.[23] 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

[21] 16 U.S.C. § 3838a(d)(5)
[22] 16 U.S.C. § 3838a(d)(6)
[23] 69 Fed. Reg. 217 (2004)

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 compliance, in the context of the CSP we believe that exceptions to the rule should not be allowed.

Beyond HEL and wetlands compliance, instead of requiring prior compliance with each and every applicable quality criteria, we recommend that the rule adopt a set of minimum standards that excludes only those producers who have not adopted even first level conservation activities and objectives. 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 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.

E. Comprehensive Approach to Conservation Has Been Overturned by Proposed Rule

***Recommendation*: The 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). Quality criteria should be**

quantifiable and measurable to the maximum extent possible. Resource concerns and quality criteria that are strictly productivity-related should be declared ineligible for coverage under the CSP.

The proposed rule requires every state and region of the country 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. The statute is very clear the program is to address the full range of conservation purposes, including *"soil, water, air, energy, plant and animal life"*[24] and that a wide variety of conservation activities 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."*[25] We find nothing in the statute or in the legislative history to suggest Congress intended this comprehensive conservation program to be transformed 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 national headquarters choose the resource concerns for the entire country has several flaws. One basic flaw with this program design is that it 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 proposed rule 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 would result 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 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.

We believe our recommendation will allow the CSP to be successful. By having every CSP participant choose from a short list of top priority natural resource concerns relevant to their farm and locality, resolve those resource concerns to the non-degradation, sustainable use standard, and be 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

[24] 16 U.S.C. § 3838a(a)
[25] 16 U.S.C. § 3838a(d)(4)

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 Department should review each state list of resources of concern and give final approval to the list only when a factual basis for impairment of resources exists, and when a reasonable basis for prioritization of concerns has been demonstrated.

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 enhanced payment provision. 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 rule a specific provision to move the program, and thus the agency's basic infrastructure, toward quantifiable and measurable criteria and tools.

One provision we expected to find in the proposed rule but did not was any indication that some of the current resources of concern in the Field Office Technical Guides should not apply to the CSP. 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 you to clearly indicate in the rule or at least in the program manual and instructions to the state offices that resource concerns listed in the FOTGs that, if addressed, would have no direct conservation and environmental benefit, are not applicable to the CSP.

F. Conservation Practices Selection Is Inconsistent with the Law and Is Not Based on Site Specificity and Best Professional Judgment

> ***Recommendation*: The rule should 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 rule should also prohibit all forms of payment for practices, facilities, and equipment specifically excluded by the law, and should encourage farmer innovation through a robust process for on-farm demonstration and pilot testing of innovative practices.**

The proposed rule would provide payments for a limited number of conservation practices to be selected by headquarters from which states can choose a subset appropriate to their area. The prefatory comments refer to this provision as providing for *"a short high priority list."*[26] The law does not authorize this dramatic scaling back of normal NRCS practice of providing support for all NRCS-approved conservation practices. In fact, the law specifically provides for a list of 18 specific conservation practices and broad categories of conservation activities that are specifically included as choices for CSP contracts.[27]

What the law does provide for is that practices eligible for payment must: contribute directly to meeting and exceeding the applicable quality criteria; 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 practice-based program. Surprisingly, the proposed rule 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 proposed rule. 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."*[28] This, of course, is both a logical and philosophical contradiction. The proposed rule provision for selecting eligible practices is in direct contradiction to the explanation of the very same provision in the prefatory comments, which in its key sentence explaining § 1469.8 states, *"NRCS will select specific practices available in a local area for CSP contracts based on site-specific conditions, tailoring them to the land characteristics and the producer's management objectives."*[29]

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 government pick the "winners" upfront unnecessarily restricts 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

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[26] 69 Fed. Reg. 213 (2004)
[27] 16 U.S.C. § 3838a(d)(4)
[28] § 1469.8(a)(vi) (2004)
[29] 69 Fed. Reg. 211 (2004)

strong emphasis within the CSP for on-farm research, demonstration, and pilot testing of innovative conservation practices and systems. This is mentioned in passing in the proposed rule, but gets short shrift.

The law does categorically exclude from any CSP payment two and only two broad sets of practices and associated equipment and facilities: *"construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devises for animal feeding operations"* and *"the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice."*[30] The proposed rule in our view does not comply with this provision of the statute, because the rule prohibits new practice payments for these two sets of practices, but does not contain the same prohibition with respect to existing practice payments or enhancement payments. The rule should be amended to either include a specific prohibition in each payment subsection, or a single prohibition that covers the entire payment section.

G. After the Fact Conservation Planning Is Inconsistent with Law and a Bad Precedent

> ***Recommendation*: Return conservation planning to its role of determining eligibility and determining what practices and enhancements will be implemented or maintained and thus what the practice payments and enhancement payments will be.**

The proposed rule refers to a multi-step application process and a multi-layered application form.[31] The prefatory comments and the NRCS CSP powerpoint also refer to an initial self-assessment questionnaire process prior to the application process, though this is not referred to in the proposed rule. The proposed application process is intended to result in the selection of participants and the determination of payment rates, based on the application alone. According to the rule, all this occurs prior to the development of the conservation plan and the CSP contract (though note that § 1469.20(3) is mistitled "Selection of contracts" even though it discusses activities the rule proposes happen prior to the development of the contract).

We endorse the proposed requirement for each participant to have a benchmark condition inventory, a proposal we originally made in comments on the Advanced Notice of Proposed Rulemaking. We also understand there must be some process or screening before NRCS commits to working on the plans so that time and money is not wasted with applicants who are unlikely to qualify or follow through. However, we strongly disagree with the proposal to determine eligibility and payments prior to developing and submitting for approval a conservation plan. The deferral of conservation planning until after determining eligibility, acceptance, and payment rates is contrary to the clear language of the law basing eligibility to participate first and foremost on developing, submitting, and obtaining approval for the conservation security plan.[32]

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[30] 16 U.S.C. § 3838c(b)(3)
[31] § 1469.20
[32] 16 U.S.C. § 3838a(b)

We do not want to see conservation planning glossed over or added as an afterthought after everything has already been decided for the contract. We want people to explore their options through the planning process, including sustainable farming systems changes. We would hope the agency would share this concern, especially since it is consistent with what at least once was a key part of its guiding philosophy.

Be that as it may, even on pragmatic grounds, the proposal has flaws. The proposal is contradictory because it intends to reveal exactly how much money will be spent on each contract without having a conservation plan approved and a contract developed. Yet, it is only through the planning process that the full scope of the conservation system, the practice components, the enhancement factors, and the management intensities will be known. It would appear to be impossible to determine new practice payments and enhancement payments without going through the full planning process. The conservation plan is at the heart of deciding what new practices and enhancements will be done, and thus must be completed before payments are calculated. In fact, exploring payments and how much must be done to meet standards is precisely the calculus farmers must explore in order to be influenced by the incentives.

This proposal could only work if the application process is as involved as conservation planning, in which case it would be redundant, or if there is a cookie-cutter, common denominator type approach that would be highly detrimental to an effective program designed to reward effective conservation and innovation. Otherwise, the proposed rule is in essence trying to cut a contract to carry out a plan that has not been developed yet.

H. Contract Renewal Provision Is Diametrically Opposite the One in the Statute

> ***Recommendation*: To succeed in maintaining and enhancing conservation systems long term and to achieve a new vision stewardship-based green payment program, farmers must be able to remain in the program. The rule should comport with the law and allow contracts in good standing to be renewed at the option of the producer.**

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."*[33] 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 anew portion of the farm and meet the eligibility criteria that pertain.[34]

The proposed rule denies the producer's right, established by law, to renew a CSP contract provided that the conservation objectives of the contract are being met. The proposed rule states: *"Contracts expire on September 30 in the last year of the contract. Contracts are not renewable unless determined by the Chief as described in § 1469.24. A participant may apply for a new*

[33] 16 U.S.C. § 3838a(e)(4)(A)
[34] 16 U.S.C. § 38383a(e)(4)(B)

conservation security contract at the next sign-up."[35] Oddly, there is no provision in § 1469.24 related to contract renewal. Whatever may or may not be missing in § 1469.24, it is clear the basic statement about renewal in § 1469.21 is diametrically opposed to the statute and must be reversed and brought into conformity with the law.

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 proposed rule ignores the clear requirement of the law and would effectively gut the CSP as a "green payments" program, kicking out all farmers and ranchers after a single multi-year contract period. This goes to the very heart and nature of the program.

I. Contract Modifications Provisions Are a Better Alternative than No Payments for Cash Rent Tenants

> ***Recommendation*: In instances when tenants cannot demonstrate tenure security to the satisfaction of the agency, the rule should be amended to allow the farmer or rancher to receive CSP payments on land meeting CSP standards as long as the tenant controls the land, using the rule's contract modification provisions if control is lost.**

The proposed rule states that where a tenant farmer cannot demonstrate control of rented land for the life of the contract, no CSP payments will be made on the land in question, yet the farmer will still be required to meet all of the CSP requirements on the land.[36] This provision will obviously dissuade producers from participating in the program, and in our view is 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 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.[37] 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.

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.

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[35] § 1469.21(f)

[36] § 1469.5(a)(3)

[37] § 1469.24(d) and (e)

III. Major Comments on Payment Structure and Limitations

A. Miniscule Base Payments Fail to Reward Participation

> *Recommendation*: **The rule should be modified to use regional and local agricultural use land valuation as the basis for determining base payments in order to improve regional equity and equity between different types of land and different types of agriculture. An appropriate factor should be used to make the resulting base payment rates comparable to cash rents. If instead the rule continues to use cash rents as the basis for determining base, the proposed 90 percent reduction factor must be eliminated.**

The proposed rule sets 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,[38] a 90% reduction from the level established by law.[39] This is one part of a multi-layered payment structure proposal that fails to provide meaningful incentives, rewards, and compensation for outstanding environmental effort and performance as envisioned by the law. The payment structure needs to be radically revised or the program has no hope of succeeding.

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.

If, on the other hand, you will not be amending the rule to make the switch to agricultural use land valuation, despite its important benefits for advancing the statutory directive to determine base payments in a manner to ensure regional equity,[40] we believe you are compelled to eliminate the proposed 90 percent reduction factor. Unlike our proposal on agricultural use land valuation, your proposed reduction factor has absolutely no bearing on regional equity, nor, we would add, on equity between types of agriculture. The only statutory basis you have for choosing a base payment methodology other than national rental rates is to ensure regional equity. Having failed to produce a proposal to accomplish that objective, it is clear the proposed rule does not conform to the law.

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[38] § 1469.23(a)(2) and (3)
[39] 16 U.S.C. § 3838c(b)
[40] 16 U.S.C. § 3838c(b)(1)(ii)

We also believe strongly there should be no grass-based farming penalty, an issue we discuss further in Section IV B below. Cropland should be valued as cropland even if currently in pasture – otherwise there would be a perverse incentive for cropping and a penalty against environmentally beneficial grass-based systems. Alternatively, the base payments could be geared to land capability class rather than current use of the land. This would make the base payment formula more precise and greatly advance the objective of ensuring regional equity and equity between types of agriculture.

B. Existing and New Practice Payments Discriminate Against CSP Participants

> ***Recommendation*: Modify the rule to apply maintenance payment provisions to new practices adopted as a result of participation in the CSP, to prohibit payments on only those practices required for conservation compliance rather than all practices contained in a compliance plan, and broaden the list of eligible practices. Establish cost-share rates under the CSP at levels equivalent to those found in EQIP and related conservation programs. Incorporate management costs for high priority land management practices into the existing practice payment structure.**

Consistent with most USDA conservation programs, the CSP will pay up to 75% of the cost of a conservation practice. Unlike previous conservation programs, the CSP will pay up to 90% for beginning farmers and ranchers. Also unlike previous conservation programs providing cost-share assistance, the CSP will also 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. Due to international trade agreement concerns, the cost-share part of the overall payment will be based on costs of practices in the base year 2001 (as opposed to cost in the year of enrollment or implementation of the practice).

The proposed rule itself has several problems that need to be corrected with respect to existing practice payments, and the prefatory comments as well as the materials being received by State Technical Committees from headquarters on existing practice payments foretell of even more serious problems. With respect to the language of the rule itself, we identify three issues that should be addressed.

First, existing practice or maintenance payments are limited to practices *"documented in the benchmark condition inventory as existing upon enrollment in CSP."*[41] This language inappropriately limits maintenance payments to existing practices, effectively prohibiting maintenance payments in later years and later contracts for new practice installation as part of a CSP contract. This prohibition 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.

Second, as we reiterate below in Section IV C, the language in this section concerning conservation compliance is inherently unfair to the best conservation and sustainable agriculture

[41] § 1469.23(b)(2)

practitioners. In implementing the conservation compliance provision, it is critical for the agency to distinguish between the minimum acceptable conservation plan for the soil type and topography and higher levels of conservation that some producers have undertaken in meeting compliance requirements. The CSP payment prohibition applies to that minimum acceptable response and should not apply to ongoing active practices incorporated into a producer's compliance plan that went above and beyond the minimum acceptable requirements. The higher efforts should be eligible for maintenance/management payments.

The proposed prohibition against paying an existing practice *payment "for any practice that is included in a participant's Highly Erodible Land ... plan"*[42] 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 you 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..."*[43] 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.

Our third concern with the language is that it again references the short list of eligible existing practice payments. This provision should be revised as we outline above in Section II F.

Beyond the language of the rule itself, we are very concerned with the whole tenor of the prefatory comments on existing practice and new practice cost share rates. Though not incorporated in the language of the rule, the prefatory comments declare that *"NRCS is also proposing that the practice payments be constrained to below that offered by other USDA cost-share program."*[44] More emphatically, the comments later state that NRCS *"proposes to limit the number of both new and existing practice payments to well below the statutory cap of 75 percent...."*[45]

We do not question the need for state and local flexibility to adjust cost share rates to bring them in line with priorities and to ensure that lower cost alternatives are being properly encouraged, as required by the statute. However, we take great issue with the notion that rates should be lower than those that prevail in that state or county for EQIP or for other similar programs. It is blatantly unfair for farmers enrolled in a program with higher conservation and environmental standards and a whole farm, comprehensive conservation system approach to be paid less than those enrolled in a program without such standards and without such an approach. In fact, this proposal stands the very idea of "reward the best, motivate the rest" on its head. We urge you to drop this idea of cheating CSP participants in its entirety and to embrace the CSP as your base

[42] § 1469.23(b)(4)
[43] § 1469.21 (i)
[44] 69 Fed. Reg. 199 (2004)
[45] 69 Fed. Reg. 213 (2004)

conservation program, one that is an integrator of other conservation programs and one that is delivered in a farmer and customer friendly fashion.

We are also greatly concerned with the existing practice list that headquarters has circulated to state offices and State Technical Committees. The prefatory comments correctly note that the Act *"authorizes payments for conservation practices that require planning, implementation, management, and maintenance."*[46] We concur, and thus are alarmed that the short list of existing practices to be designated for payment exclusively includes maintenance payments for structural practices with absolutely no indication that any payments that reflect management costs for land management practices will be included. As we did in our comments on the Advanced Notice of Proposed Rulemaking and in multiple meetings, we urge you once again to account for both maintenance and management costs with regard to active management of existing practices, and properly assess and credit management costs where applicable.

We would also reiterate several other points we made in our comments on the ANPR that relate to this issue. We urge you to:

- Make certain that a complete 2001 data set is available in all states and regions for, as applicable, planning, implementation, management, and maintenance costs related to each conservation practice, and find ways to fill in the gaps that exist as expeditiously as possible.
- Review existing cost-share and incentive rates and make appropriate adjustments in applying them to CSP to ensure that the CSP schedule is geared as much as possible to environmental benefits.
- Make sure regional disparities in payment rates are fully justified by local conditions, especially in light of emerging data showing extreme variability in EQIP payment rates between states and regions.
- Develop appropriate payment rates for new conservation practice standards that did not exist in the field office guides in 2001, including those developed for CSP conservation practices specified in the list in the statute at Sec. 1238A(d)(4) that are not currently represented at all or in depth in the technical guides (e.g., energy conservation measures, biological resource conservation and regeneration, prairie restoration and protection, etc.).

D. Enhancement Payments Should Reward and Motivate

***Recommendation*: The rule should be modified to clarify with precise language that enhancement payments will be made for both existing and new conservation activity that contribute to management intensity, resource enhancement, and addressing local or additional resource concerns. The rule should also include as a goal for the program to be able in the future to pay to the maximum extent possible for results. The language limiting enhancement payments to cost should be eliminated.**

[46] 69 Fed. Reg. 208 (2004)

We concur in general with the proposal that enhanced payments are a central feature of the CSP and ought to be a very significant part of the total payments for producers prepared to take advantage of them. We also concur with the proposed rule's basic thrust that State Conservationists with advice from State Technical Committees will develop the enhancement activities and enhancement payment amounts within each state. Enhanced payments should reward the most environmentally beneficial systems and to the maximum extent possible pay for results.

However, we are concerned with the glimpses, admittedly tiny glimpses, provided in the rule and prefatory comments about the payment structure. In our view, enhanced payments for on-farm research and demonstration projects and for on-farm monitoring and evaluation activities should allow the producer to recover costs. The enhanced payments for treating resource problems to a level beyond the NRCS standards, for addressing additional resource problems, and for collective action within a watershed should not be treated as cost-share but rather as real bonuses to reward exceptional performance. We urge you to adopt these standards in all materials related to enhancement payments.

We are also intrigued by the notion considered in some states to tie enhancement payments under the first enhancement factor to graduated payment levels for graduated levels of management intensity, using quantifiable measures to the maximum extent possible. We encourage you to pursue this idea and to encourage states to adopt such a graduated system.

We would also recall your attention to the detailed and specific recommendations for enhancement payment rates we provided in our comments on the Advanced Notice of Proposed Rulemaking and encourage you to include those ideas in guidance issued to the states. Highlighting just a few of those suggestions again, we urge you to:

- Incorporate 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.

- 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 to be addressed in any or all of the three tiers, 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.

- Encourage farmers to undertake CSP on-farm 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.

- Base the enhanced 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 amount 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.

We have several specific comments with respect to the wording of the proposed rule on enhancement payments. At § 1469.23(d)(2) the language should be amended to fix all the tenses so it is crystal clear that both existing and new activities that contribute to resource enhancement and management intensity or addressing local or additional resource concerns are accounted for. While we have been relieved to be told by several NRCS staff people who have worked on the rule that this is in fact the intent, in our view the actual language is at best ambiguous and needs to be clarified. At § 1469.23(d)(3), the language related to conservation compliance again needs to be fixed in the same fashion we recommended with respect to existing and new practice payments in Section III B above. Finally, in § 1469.23(d)(4)(ii) the last sentence, limiting enhancement rewards to not more than estimated cost should be removed as inconsistent with the basic idea of reward or bonus payments.

Of high importance to the ultimate success of the CSP is the special enhanced payment status of resource-conserving crop rotations, managed rotational grazing, conservation buffers, and other high impact, high pay-off practices and systems. In our view these should highlighted, provided with very substantial payment rates, and promoted heavily in program delivery. We address each of these issues more specifically in Section IVA below.

E. Provision to Further Restrict CSP Payment Rates Should Be Deleted

***Recommendation*: The provision providing blanket authority to further limit base, practice, and enhancement payments should be struck.**

The proposed rule includes a provision authorizing the Chief to *"limit the base, practice, and enhancement 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."*[47] This provision appears to give the agency carte blanche to change the essence of the program payment structure and move even further away from the requirements of the statute at any given point in time, essentially creating an administrative means for creation of a whole new and different program. In our view, this so far crosses the boundaries of administrative discretion as to constitute a truly bizarre feature. The provision is a roadmap for arbitrary and capricious administration of the CSP. We urge you to strike this provision in its entirety.

F. Definition of Agricultural Operation and Contract Limits Language Is on Right Track

***Recommendation*: Retain with modest revision the proposed definition of agricultural operation and tighten the interface between this definition and the "one contract per agricultural operation" requirement.**

[47] § 1469.23(g)

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 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 to participate, but limit payments to a moderate amount per farmer 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.

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. However, we urge you to delete from the definition the words *"and constituting a cohesive management unit"*[48] as they could be construed as a potential loophole. Our fear in this respect is heightened by the comment made in the prefatory comments: *"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)***[49] This language seems to openly invite abuse. We urge you to drop the cohesive management unit language from the definition and to stick unambiguously to the one contract, one producer limit. With this deletion from the definition of agricultural operation, we would support the language of the proposed rule in the contract requirements section limiting program participants to one contract per agricultural operation.[50]

F. Proposed Rule Is Silent on Statute's Requirement for Direct Attribution of Payments

> ***Recommendation*: The rule must be amended to incorporate the statutory direct attribution of payments requirement. The rule should also 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. For producers, the rule should require material participation in the operation on a regular, continuous, and substantial basis, including personal provision of management, labor, and on-site services.**

The law requires direct attribution of payments back to the individual or entity.[51] 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

[48] § 1469.3
[49] 69 Fed. Reg. 206 (2004)
[50] § 1469.21(b)
[51] 16 U.S.C. § 3838c(b)(2)

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 program to abide by these payment limits and to develop rules to ensure they cannot be evaded.

We are shocked that this requirement of law is not addressed in the proposed regulation nor even discussed in the prefatory comments despite being raised in many of the public comments you received in response to the Advanced Notice of Proposed Rulemaking. The CSP statutory provision is equivalent to the one found in the EQIP statute, which resulted in a direct attribution requirement and enforcement mechanism being included in the final EQIP rule (§ 1466.24 (a) and (b)(3)). There is no justification for different treatment of the same provision as it affects these two rulemakings.

This oversight must be corrected and the 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 and to controlling the program cost.

In order to prevent abuse, we also urge you to write rules and guidance with respect to crop share landlords clearly stating that the landlord's share of the payments can be no greater than "usual and customary" crop shares for landlords in a given area. For actual producers who are at risk, rules and guidance should require material participation in the operation on a regular, continuous, and substantial basis, including personal provision of management, labor and on-site services.

G. Prohibition on Payments for Animal Confinement Operations Are Missing from Rule in Several Places

> ***Recommendation*: Incorporate the prohibition on payments for animal waste storage and treatment and other non-land based structures from the new practice payment subsection into all of the payment subsections.**

As we noted above in the discussion of eligible conservation practices (see Section II F), the law categorically excludes from any CSP payment two broad sets of practices and associated equipment and facilities: *"construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devises for animal feeding operations"* and *"the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice."*[52] The proposed rule does not comply with this provision of the statute. While the rule prohibits new practice payments for these two sets of practices, it does not contain the same prohibition with respect to existing practice payments or enhancement payments. The rule should be amended to either include a specific prohibition in each payment subsection, or a single prohibition that covers the entire payment section.

[52] 16 U.S.C. § 3838c(b)(3)

IV. Major Comments on Program Elements of Special Relevance to Sustainable Agriculture Practitioners

A. Resource-Conservation Crop Rotations, Rotational Grazing, and Buffers Are Missing from Enhancement Payment Section of Rule

> ***Recommendation*: The rule should be amended to include specific provision for enhancement payments for resource-conserving crop rotations, managed rotational grazing systems, and conservation buffers. The rule should also define resource-conserving crop, and NRCS should 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.**

The statute makes resource-conserving crop rotations, managed rotational grazing, and conservation buffers eligible for enhancement payments under the first enhanced payment criteria.[53] The proposed rule 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 enhanced payments on a nationwide basis.

The law defines a RCC rotation as "*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)."[54]

Unfortunately, the proposed rule attempts to change this statutory definition. The rule converts the decisive "and" connecting the items in the list to an "or," which has the effect of greatly weakening the definition. In addition, the rule adds "maintains or" prior to the words "improves soil fertility and tilth." We urge you to confine the regulatory definition to the statutory wording.

We also note that the statute directs the Secretary to define resource-conserving crop for purposes of operationalizing this provision. The rule fails to provide such a definition. We urge

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[53] 16 U.S.C. § 3838c(b)(1)(C)(iii)
[54] 16 U.S.C. § 3838 "resource-conserving crop rotation"

you to amend the rule to provide a definition of "resource-conserving crop" based on the language included in the initial bill proposing the CSP, as follows:

"Resource-conserving crop.--The term `resource-conserving crop' means—

"(A) a perennial grass;
"(B) a legume grown for use as--
"(i) forage;
"(ii) seed for planting; or
"(iii) green manure;
"(C) a legume-grass mixture;
"(D) a small grain grown in combination with a grass or legume, whether interseeded or planted in succession;
"(E) a winter annual oilseed crop which provides soil protection; and
"(F) 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 definition for resource-conserving crop 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.

B. Grass-Based Agriculture Needs Fair Treatment in Payment Structure

***Recommendation*: The rule should be amended to establish that base payments will be based on land capability classes rather than current land use.**

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.

C. Eligible Conservation Buffer Practices Should be Comprehensive and Delineated

***Recommendation*: The rule should be amended to require that 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 use.**

The 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 land including buffers.[55] The 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.

The rule could also helpfully delineate 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"*

D. Farmers Who Exceeded Conservation Compliance Requirements Should Not Be Penalized

> ***Recommendation*: Modify the rule to prohibit payments on only those practices required for conservation compliance rather than all practices contained in a compliance plan.**

As noted above, the proposed rule's prohibition on program payments on conservation compliance practices is too far-reaching. It would deny payments on any practices included in a producer's compliance plan, even if some and perhaps most of the practices were not required of the producer if the producer had chosen the compliance option of least resistance. In other words, those who responded to compliance requirements by adopting a conservation systems approach, similar to what the CSP endorses and promotes, rather than the minimum that NRCS required, would now be penalized for their initiative. In our view, the agency should be ashamed it ever weakened compliance standards to the extent it did, but having done so, it is hypocritical in the extreme to turn around and deny CSP payments for actions by farmers that rose above the norm. We urge you to amend the rule to limit the prohibition on payments to practices that were absolutely required to meet compliance rather than all practices in a producer's compliance plan.

E. 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 the plan for the CSP.**

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[55] 16 U.S.C. § 3838a(b)(4)

Through 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 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 hope the occasion of amending this proposed rule will result in this overdue consultation to take place and reach an effective solution. 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.

F. The Rule Should Specifically Reference Germplasm Conservation as Eligible Activity

> ***Recommendation*: The rule should be amended to add specific reference to biological resource conservation and regeneration, including plant and animal germplasm conservation, most immediately as an enhancement activity and ultimately as a constituent part of the resources of concern in the technical guides, with a complete set of conservation practices and standards.**

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.[56] 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. These practices 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.

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[56] 16 U.S.C. 3838a(d)(4)

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. With respect to animal issues in particular, we strongly encourage NRCS to consult with the American Livestock Breeds Association.

G. Rule Lacks Functional Definition of Forested Land that is an Incidental Part of an Agricultural Operation

> ***Recommendation*: In addition to the definition of "forested land" provided in Section 1469.3, the rule should be modified to include a functional definition of forested land that is "an incidental part of an agricultural operation" that will be eligible for inclusion in a CSP contract.**
>
> **We recommend that the following definition be added 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 the benefits (physical, biological, ecological, economic, social) from biophysical interactions created when trees and/or shrubs are deliberately combined with crops and/or livestock."**
>
> **We recommend that all private non-industrial forested land that falls within this functional definition 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. In addition, agroforestry practices that assist the producer enhance resource conservation should be included in enhanced payment formulas.**

The preamble to the proposed rule at p. 206 provides an example of guidelines for forested land eligible for CSP contracts that rests not on the extent to which the forested land is used incidental to an agricultural operation but rather on the height of mature trees and the degree of canopy cover on the land. The proposed guideline offered as an example is rather confusing because it actually excludes from the CSP "tree-covered grazing operations" on land that fits the definition of "forested land" as provided in Section 1469.3 of the proposed rule. That example guideline, therefore, is not a guideline for inclusion of "forested land" based on its relationship to an agricultural operation but rather a guideline for exclusion of grazed land merely because it is forested land, without regard to its value as an integral part of an agricultural operation.

We have no problem with the definition of "forested land" and we agree that not all forested land should be eligible for inclusion in the CSP. But we do recommend that NRCS interpret the word "incidental" to mean 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 which we recommend above for forested land eligibility 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 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 agroforestry systems, including windbreaks, alley cropping, forest farming, multistory cropping, living snowfences, riparian forest buffers, etc. and the NRCS conservation practice standards which can be incorporated into these systems.

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 fledgings, such as provided in NRCS Conservation Practice Standard No. 645 - Upland Wildlife Habitat Management, is established on the forested land in coordination with the systems and practices established on the pasture or rangeland.

NRCS has established numerous conservation standard practices 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.

H. On-Farm Conservation Research and Demonstration Should Be Promoted and Protocols and Payment Mechanisms Developed

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

The Department should aggressively promote the inclusion of research elements and educational programs in CSP contracts and should reward such activities with significant enhanced payments. The best and fastest way to promote conservation is to give producers proof of its effectiveness and an opportunity to see innovative practices and systems in action on a farm in their 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 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 staff with recommendations for these materials.

V. Comments on Provisions Dealing with 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 proposed rule 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."[57]

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 producers not own a farm of larger size than the county average, or perhaps a limit slightly larger than county average, to qualify as a beginning farmer or rancher for purposes of the cost-share bonus.

• 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 we would suggest that a net income test could be useful in targeting the special beginning farmer and rancher payments.

[57] § 1469.3 "Beginning farmer or rancher"

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 should be modified to increase the gross farm sales and poverty level tests.**

We welcome the attempt made in the proposed rule to develop a definition for limited resource farmers and ranchers, but urge 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.

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 would also note the 100% of 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.

V. Section-by-Section Language Recommendations

For your convenience, we will submit some supplemental material in the near future to code our recommendations by section number and to include a wide variety of specific language changes we recommend to improve the rule, including a number of more minor but not insignificant ways to improve definitions and operational language.

VII. NRCS Form Comment Sheet

Below we have pasted in the handout NRCS has distributed to collect form comments, with brief versions of our responses, most of which are given in more detail in the other sections above.

1. NRCS Preferred Approach (page 197): Under the constraints of a capped entitlement, the Secretary has proposed ways to still deliver an effective CSP program. NRCS is proposing an approach based on five elements. Comments are requested on this overall approach:

- Limit sign-ups: Conduct periodic CSP sign-ups
- Eligibility: Criteria should be sufficiently rigorous to insure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.
- Contracts: Requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.
- Enrollment categories: Prioritize funding to insure that those producers with the highest commitment to conservation are funded first.
- Payments: Structure payments to ensure that environmental benefits will be achieved.

(A more detailed description of this approach can be found on page 197 under the heading *NRCS Preferred Approach.)*

Comments: CSP is not a capped program; it is an full-fledged, uncapped entitlement beginning October 2004. Many aspects of the so-called "preferred approach" are contrary to the letter and spirit of the law. NRCS should: drop the watershed limitation; drop enrollment "categories" limitation; make strong stewardship farmers who agree to resolve resources of concern during the contract period eligible to participate; dramatically increase payments to farmers; offer continuous rather than limited signups; and allow states to select their most pressing resource concerns to which farmers can respond.

2. Funding Enrollment Categories (page 198, 3rd column). Under "4. Prioritize Funding To Ensure That Those Producers With the Highest Commitment to Conservation Are Funded First," NRCS is inviting comment on how to handle situations where there may be insufficient funds for all enrollment categories.

Comments: Enrollment "categories" should be eliminated and CSP should be administered like the conservation entitlement program it is: if the farmer is eligible and meets all the pertinent conservation standards, then they should be enrolled. The program should set a high environmental bar and let all farmers and ranchers willing and able to reach it do so, without discriminating against any particular categories or classes of producers.

3. Enhancement Activities (page 199, column 1 and 2). The Statute offers five types of enhancement activities and NRCS is seeking comments on the following concepts:

- The improvement of a significant resource concern to a condition that exceeds the requirements for the participant's tier of participation and contract requirements.
- An improvement in a priority local resource condition.
- Participation in an on-farm conservation research, demonstration or pilot project.
- Cooperation with other producers to implement watershed or regional resource conservation plans that involve at least 75% of the producers in the targeted area.
- Implementation of assessment and evaluation activities relating to practices included in the CSP.

Comments: Enhancement payments should reward both additional efforts and exceptional performance. Enhancement payments under the first factor should be an incentive payment or payment for performance, not a cost share payment. Rewarding resource-conserving crop rotations, managed rotational grazing, and comprehensive conservation buffer practices, as required by the statute, needs to be added to the rule and adhered to. On-farm research and demonstration projects and on-farm monitoring and evaluation projects should be strongly encouraged and should include compensation for the farmer's time and labor in addition to direct costs.

4. Alternative Approaches (page 199 and 200). In addition to the preferred approach, NRCS considered several alternatives. NRCS is seeking comments on the proposed approach and these alternatives.

- Use enrollment categories to prioritize CSP resources in high priority watersheds identified by NRCS administrative regions.
- Apportion the limited budget according to a formula of some kind, for example by discounting each participant's contract payment equally.
- Close sign-up once available funds are exhausted.
- Limit the number of tiers of participation offered.
- Only allow historic stewards to participate – only those who have already completed the highest conservation achievement would be funded.

Comments: None of the alternative approaches, nor the preferred approach, implement CSP as an uncapped conservation entitlement, nor are they consistent with the law. A new alternative should be proposed in a supplemental rule according to the provisions of the statute. Designating a few watersheds and "categories" defeats the goal of CSP as a national conservation program. Discounting already laughably low payments is unacceptable. Closing sign-ups when available funds are exhausted is better than the "preferred approach," but should only be utilized if Congress alters the entitlement status of CSP in the future, and contracts that cannot be finalized should be carried over to the next fiscal year. All three tiers must be retained so that farmers can enter the program according to where they start from in terms of conservation excellence; if the entitlement status were to change in the future, however, enrolling Tier 3 participants first would be a better approach than the "preferred approach." Finally, to only "reward the best" and not "motivate the rest" would seriously harm the CSP because there would be no focus on increasing conservation benefits.

5. Limited Resource Producers (page 201, column 3). NRCS welcomes examples and suggestions for identifying conservation opportunities related to limited resource operations. Comments regarding how other programs could best help limited resource and other less capitalized producers to become eligible for CSP, given the stewardship standards to participate, are also welcome.

Comments: Limited resource producers will benefit from raising the cost-share rate to 75%. Limited resource beginning farmers will benefit from the statute's provision for 90% cost share for these farmers. Promoting the most cost-effective practices requiring the least expenditure for the farmer's share of cost to solve resource concerns would also be advantageous. Increasing base and enhancement payments for everyone, so that CSP payments would contribute to the farm's bottom line, would make it easier for limited resource farmers to come up with their portion of cost share.

6. Leveraging CSP (page 201, column 3). NRCS is seeking comment on the opportunity to use CSP in a collaborative mode with other programs to effectively leverage the Federal contribution to resource improvement and enhancement.

Comments: Creating collaboration among conservation programs to increase leveraging capabilities sounds good. NRCS has the perfect tool to make this happen – the Partnerships and Cooperation provision (Section 2003) of the 2002 Farm Bill. This initiative specifically calls for collaboration among state and local agencies, Indian tribes, and nongovernmental organizations to encourage cumulative conservation benefits through cooperation of producers spanning multiple agricultural operations. To carry out this provision the Secretary may use resources from any and all of the available conservation programs. NRCS should focus efforts to increase collaboration by implementing this long-delayed provision of the Farm Bill.

7. Leveraging CSP (page 202, column 1). NRCS is seeking comment on how to implement a program that uses collaboration and leveraging of funds to achieve resource improvements on working agricultural lands through intensive management activities and innovative technologies.

Comments: Collaboration efforts should be encouraged through implementation of the Partnerships and Cooperation provision (see above). The CSP proposed rule "collaboration" model, such as it is, requires the farm family to carry the financial load. It would limit cost-share to a very short list of practices and very low cost-share rates and limit enhancement payments to a low percentage of conservation costs. This will minimize participation and result in fewer conservation systems on working agricultural land, defeating the goals of the program.

Farmers and ranchers who would otherwise qualify for CSP but may need to add certain structural or vegetative practice(s) to reach resource enhancement levels should not be forced to apply to different conservation program before qualifying for CSP. Those farmers and ranchers would not be guaranteed funding under these other programs and NRCS should not look to limit participation by demanding certain practices be paid for through programs where funding is not

guaranteed. There is typically more interest than funds available for capped conservation programs. This would only serve to delay implementation of enhanced conservation.

8. Environmental Performance, Evaluation and Accountability (page 202, column 3). NRCS welcomes comments and suggestions for designing and implementing evaluation approaches, and suggestions as to what data and information would be most useful to ensure a high level of accountability for CSP.

Comments: As provided for in the proposed rule, the evaluation process should begin with a benchmark inventory of the resources of concern. This will serve as a baseline that the conservation plan would go forward with and establish measurable goals for further enhancement of those resources. In addition, NRCS should provide strong incentives for on-farm monitoring and evaluation activities, and encourage the integration of farm level data into landscape and more macro-level monitoring, evaluation and analysis. One avenue for achieving the latter goal would be for NRCS to implement the Partnerships and Cooperation initiative contained in the 2002 Farm Bill.

9. Significant Resource Concerns (page 203). NRCS is proposing to designate water quality and soil quality as nationally significant resource concerns. NRCS requests additional public comment on the use of nationally significant resource concerns.

Comments: The conservation resource concern priorities should be set at least in part at the state level so the program can be as responsive as possible to the major resource issues in each region of the country. A good solution would be to have each state include soil quality and water quality among their top 6 resource concerns and have farmers choose to address at least 2 of the 6 (tier 1 and tier 2) and all 6 (tier 3).

10. Definition of Agricultural Operation (page 205, column 2). The Act refers to "agricultural operation" without defining the term. NRCS has evaluated various definition alternatives and is seeking comment on their chosen proposed definition found on page 205, column 2. This definition is the same as used in the Great Plains Conservation Program (GPCP).

Comments: The agricultural operation should include all land owned and leased. Applicants should also demonstrate a reasonable expectation of control of the land for the contract period. However, the proposal requiring participants carry out conservation practices without financial assistance on leased land for which they cannot prove control for entire length of the contract is unfair and unworkable. NRCS should allow a farmer/rancher to include such land under a CSP contract and use the contract modification provisions to make payment and related adjustments if they loose the particular lease in question.

11. Incidental Forest Land (page 206, column 1). Forestland offered for inclusion in a CSP contract as an incidental part of the agricultural operation must meet the guidelines listed on page

206, column 1. NRCS is seeking comments on the usefulness of these guidelines for managing questions relative to the inclusion of incidental forested lands in CSP contracts.

Comments: The specific definition of 'forest' proposed by NRCS seems adequate, but what is missing is a functional definition of forested land that is "an incidental part of an agricultural operation. NRCS should add a definition and focus on the actual land use of the forested area and include all agroforestry practices (e.g., windbreaks and shelterbelts, forest farming, nut harvest, alley cropping, forest buffers, silvopasture systems, etc.).

12. Incidental Forest Land Treatment (page 206, column 1). Another issue that NRCS seeks guidance on is the question of what level of treatment should be required for the forestland that is included in the CSP contract as land incidental to the agricultural operation?

Comments: Incidental forest land should both meet relevant quality criteria and be eligible for all forms of CSP payments. Agroforestry practices that assist the producer enhance resource conservation should be included in enhanced payment formulas.

13. Enhancement Payments (page 206, column 3). NRCS seeks additional comments on the construction and calculation of enhancement payments.

Comments: The enhanced payments section of the rules should clearly provide very substantial enhancement payments nationwide for resource-conserving crop rotations, managed rotational grazing, and comprehensive conservation buffer practices, as required by the law. Enhancement payments should also be available for high levels of management intensity leading to demonstrable resource and environmental enhancement. NRCS should emphasize enhancement payments for on-farm research, demonstration, monitoring, and evaluation, and should reflect the full cost of those practices (including producer time), since they provide substantial benefits to NRCS and society but often have little financial benefit to producers. The State Technical Committees should be authorized to approve enhancement payments for additional practices or systems that address local priority resource concerns, and for reaching participation targets in targeted areas.

14. Contract Limits (page 206, column 3). NRCS seeking additional comments on the idea of a one-producer, one-contract approach brought up by the respondents to the Advanced Notice of Proposed Rule.

Comments: One-producer, one contract is the proper approach. It would provide the fairest treatment of all producers and would reduce NRCS administrative costs. The rule should also attribute all payments to real persons. Without one producer, one contract and direct attribution of payments, NRCS would be opening up the program to fraud and abuse.

15. Administration (page 208, column 2). One important aspect of CSP administration is the procedures NRCS will follow if NRCS receives more eligible applications than it can fund. NRCS is specifically seeking comment on how to select the contracts of the pool of eligible producers to best serve the purpose of the program.

Comments: We do not believe the law allows USDA to "select" contracts from some eligible producers, while denying CSP contracts to other eligible producers. USDA should set reasonable eligibility standards, set a high environmental bar, and approve all submitted CSP Plans that meet those standards. Since Congress chose to limit funding for the current fiscal year, if NRCS receives more approved CSP Plans than it can fund in the current fiscal year, it should approve contracts for current year funding based on their application date, holding the remaining approved contracts and awarding them at the beginning of the next fiscal year. Those approved CSP Plans would be first in line to receive contracts beginning October 1, provided there are no substantial changes in the producer's situation or offer that would require a major revision in the Plan or Contract

16. Changes in Landuse (page 209, column 3). In some instances a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive landuse. This change in land use may change the base payment eligibility. NRCS is asking comment on how this situation can be addressed in the rule.

Comments: The rule should establish base payments based on NRCS land capability classes, not based on current land use. Rental rates for pasture are far lower than that of cropland. If NRCS were to figure base payments on land use, 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, perhaps at significant harm to the environment. Land that has been placed in permanent cover, a practice with enormous environmental benefits, should not be penalized financially. This program is about rewarding environmental performance and it should thus encourage should behavior through an appropriate payment structure.

17. Eligibility Requirements (page 210, column 1). Concerns were expressed through the Advanced Notice of Proposed Rule process that producers not accept stewardship payments while at the same time operating land outside the CSP contract at a less-than-acceptable level of treatment. NRCS is seeking comments on this provision.

Comments: This would apply to Tier 1 contracts only, since the other two tiers cover the entire agricultural operation. All land should be in compliance with the basic conservation requirements of the 1985 farm bill even if it is outside of the land covered under a Tier 1 contract. It is not clear NRCS would have the authority to require more than this, though the agency should certainly do everything possible to encourage producers to move up to Tier 2 as soon as possible.

18. Eligibility Requirements (page 210, column 2). Producers who have historically met or exceeded the requirements, in some cases, may have endured a flood, fire, or other event that has either destroyed or damaged practices that would have made them eligible for CSP. NRCS is seeking comment on whether there should be any special dispensation or consideration given for this situation.

Comments: Yes, there should be some considerations factored in for forces beyond human control. It would unfairly penalize those who have implemented sound conservation practices to exclude them from the program.

19. Eligibility Requirements (page 210, column 3). As a contract requirement, the participant will be required to do additional conservation practices, measures, or enhancements as outlined in this section and in the sign-up announcement. NRCS is seeking comment on these minimum eligibility and contract requirements.

Comments: The ultimate goal of participants should be focused toward regeneration and enhancement of resources. The program's tiered approach and enhancement payments will foster this objective. In regards to minimum eligibility, however, the proposed rule has established too high of a bar by proposing that participants need to have already fully achieved all soil and water quality resource quality criteria for Tiers 1 and 2 and all resource quality criteria for Tier 3. The legislation indicates these must be solved as a result of CSP participation. Participants should be close enough to achieving all relevant quality criteria that within the timeframe of their first CSP contract this goal will be met. If NRCS has other ideas in mind for "additional requirements" for eligibility, it is incumbent on the agency to release those in detail for public comment.

20. Eligibility Requirements (page 210, column 3). NRCS is also seeking comments on the utility of a self-screening tool (both Web-based and hardcopy) to assist producers in determining if they should consider application to CSP. Should this self-screening tool be a regulatory requirement as described in the proposed rule?

Comments: The self-screening tool could help manage the workload for NRCS. However, farmers and ranchers should be free to come into their local NRCS office to seek assistance with program sign-up including help with particular screening tool questions for which they need assistance. While use of such a tool may greatly demands on staff time, it is unrealistic to expect any screening instrument to totally eliminate face-to-face contact with resource professionals.

21. Enrollment Categories (page 211, column 1). NRCS is proposing to fund as many subcategories within the last category to be funded as possible. Additionally, NRCS is seeking comments on whether the remaining subcategories should be offered pro-rated payments, or not funded at all

Comments: If the program is administered as an entitlement program as required by law, this question is no longer relevant. Should the program be capped in a particular year, enrollment categories would still be unnecessary. If the funding constraint is severe, NRCS should enroll Tier 3 applicants first, followed by Tier 2. See detailed comments for more complete explanation. Payments should not be pro-rated. Rather, contracts should be funded by date of application, with unfunded contracts held over to the following fiscal year.

22. Enrollment Categories (page 211, column 1). NRCS is seeking comments on whether it should partially fund applications, or whether only those categories and subcategories that could be fully funded would be offered a CSP contract.

Comments: Enrollment categories should be eliminated. CSP is a comprehensive conservation incentives program. Pro-rated or partial payments will not lead to enhanced conservation but rather represent a disincentive for program participation.

23. Conservation Practices (page 211, column 3). NRCS is proposing to utilize the new practice component of CSP to provide cost-share when practices are needed, although at a lower cost share than other USDA programs, to minimize redundancy between CSP and other existing USDA conservation programs. NRCS seeks comment on whether this approach will encourage participants to install practices through other programs in order to become eligible for CSP.

Comments: The purpose of this rule should not be to limit participation in CSP but rather to implement the law as passed by Congress. The full range of NRCS-approved practices, other than those specifically excluded by the statute, should be allowed for consideration as part of CSP conservation plans. The proposed rule attempts to encourage participation in other programs by restricting participation in CSP. As a result, farmers and ranchers wishing to transition to sustainable agriculture could be denied access to the program. This "minimize redundancy" proposal is a blatant misuse of administrative discretion. Its goal seems to be to present the most farmer-unfriendly approach possible to program administration in order to frustrate the agency's customers and discourage participation.

24. Technical Assistance (page 211 and 212). CSP technical assistance tasks identified include: 1) Conduct the sign-up and application process; 2) Conduct conservation planning; conservation practice survey, layout, design, installation, and certification; 3) Training, certification, and quality assurance of professional conservationists; and 4) Evaluation and assessment of the producer's operation and maintenance needs. NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers.

Comments: The NRCS, through local NRCS and SWCD offices, should conduct the sign-up and application process. Conservation planning, conservation practice survey, layout, and design are tasks that can be performed by NRCS-certified/approved TSPs. Installation and certification of practices in CSP plan should include oversight by NRCS/SWCD. NRCS should be encouraged to conduct training and certification programs for TSPs to provide a qualified,

producer's control. However, the rule misstates the law on this point in the section on contract requirements and should be corrected to reflect the agency's considerable discretion.

28. Rental Payment Reduction Factor (page 213, column 1). NRCS is seeking comment on whether the reduction factor should be fixed or variable over the life of the program, with the 0.1 factor being the upper limit.

Comments: The rule should be revised to set base payments at a reasonable percentage of agricultural use land valuation. If, however, NRCS is determined to keep base payments based on rental rates, the 0.1 factor should be eliminated. Base payments should neither be the biggest part of the CSP payment structure nor a trivial amount. The 0.1 factor makes them insignificant, and to make them lower still would be even more absurd.

29. Assessment and Evaluation (page 214, column 1). NRCS is seeking comments on which assessment and evaluation projects would most benefit from the involvement of CSP participants and would be most useful for program evaluation.

Comments: NRCS should not discount the value of on-farm monitoring and evaluation to the farmer. Good on-farm monitoring and evaluation can help the operator continually adapt the conservation system to achieve optimal benefits. It can also play a big educational role in rallying entire communities to make locally appropriate changes. That said, linking the knowledge gained through such means as farmer networks and electronic databases will also further increase the value of this information, as will incorporating participating farms into larger monitoring and research endeavors such as those that would be available if NRCS were to implement the long-delayed Partnerships and Cooperation initiative.

30. Enhancement Activity Payments (page 214, column 1). NRCS is seeking comments on how to determine the appropriate payment rates for those types of enhancement activities where the payment is intended to encourage producers to change their mode of operation, but not necessarily to offset additional or more expensive activities.

Comments: Enhancements payments under the first enhancement payment factor should be based as much as possible on performance outcomes. Linking these practices and systems to the on-farm research and demonstration and the on-farm monitoring and evaluation factors will help make this possible. From a performance or outcome perspective, enhancement payment rewards for environmentally important management changes that do not necessarily entail significant out-of-pocket costs are entirely appropriate. Enhancement payments should reflect cost plus an incentive or bonus. Where there is little or no cost, they should be set at a flat bonus rate.