



October 28, 2009

Gregory Johnson, Director  
Financial Assistance Programs Division, USDA, NRCS  
1400 Independence Ave. SW, Room 5237-S  
Washington D.C. 20250

Submitted via e-mail: [CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov)

**Re: Conservation Stewardship Program – Interim Final Rule with Request for Comments**  
(Federal Register Vol. 74 at pp. 37499-37519) (July 29, 2009) / (Docket No. NRCS-IFR-09004)

Dear Mr. Johnson:

On behalf of its 39 member organizations, the National Sustainable Agriculture Coalition (NSAC) is pleased to submit these comments in response to the Conservation Stewardship Program (CSP) Interim Final Rule (IFR). A complete list of our member organizations is appended below. Many of our NSAC member organizations worked directly with farmers and ranchers during the 2009 CSP sign-up. Our NSAC recommendations in part reflect reports and reviews from farmers and ranchers about the CSP sign-up and ranking process.

The CSP provides the opportunity for farmers and ranchers to maintain and improve previously successful conservation measures, to expand these measures onto additional acreage, and to add new conservation activities, ensuring the integration of existing and new conservation measures. The new CSP, properly administered and promoted, will produce real, measurable conservation and environmental benefits. It is USDA's most important new tool yet to help farmers tackle climate change mitigation, energy and water conservation, water quality impairment, loss of habitat and biodiversity, overuse of agrichemicals, and critical natural resource and environmental concerns.

CSP has the capacity to reach all types of agriculture by encouraging strong conservation practices on crop, pasture, range, and forested land. CSP can serve sustainable and organic operations, specialty crop farms, grazing operations of all kinds, and diversified crop-livestock farms. CSP's high natural resource and environmental standards guarantee that participating farmers and ranchers operate in a way that results in clean water, healthy soils and good wildlife habitat.

NSAC looks forward to working with the NRCS to help ensure that the CSP achieves its full potential and enrolls at least 130 million acres of working land with comprehensive conservation assistance over the next ten years. Thank you for your consideration of these recommendations.

Sincerely,

A handwritten signature in black ink that reads "Ferd Hoefner". The signature is written in a cursive, slightly slanted style.

Ferd Hoefner, NSAC Policy Director

cc: Ann Mills, Dave White, Ed Burton, Tony Kramer, Dwayne Howard

**NATIONAL SUSTAINABLE AGRICULTURE COALITION –  
REPRESENTED MEMBER ORGANIZATIONS**

Agriculture and Land Based Training Association (ALBA) - Salinas, CA  
Alternative Energy Resources Organization (AERO) - Helena, MT  
California Certified Organic Farmers (CCOF) - Santa Cruz, CA  
California FarmLink - Sebastapol, CA  
C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture) – Hereford, TX  
Center for Rural Affairs - Lyons, NE  
Clagett Farm/Chesapeake Bay Foundation - Upper Marlboro, MD  
Community Alliance with Family Farmers - Davis, CA  
Dakota Rural Action - Brookings, SD  
Delta Land and Community, Inc. - Almyra, AR  
Ecological Farming Association - Watsonville, CA  
Flats Mentor Farm - Lancaster, MA  
Florida Organic Growers - Gainesville, FL  
Food Animal Concerns Trust - Chicago, IL  
Georgia Organics - Atlanta, GA  
Grassworks - Wausau, WI  
Illinois Stewardship Alliance - Rochester, IL  
Iowa Natural Heritage Foundation - Des Moines, IA  
Island Grown Initiative - Vineyard Haven, MA  
Izaak Walton League of America - St. Paul, MN  
Kansas Rural Center - Whiting, KS  
Kerr Center for Sustainable Agriculture - Poteau, OK  
Land Stewardship Project - White Bear Lake, MN  
Michael Fields Agricultural Institute - East Troy, WI  
Michigan Integrated Food and Farming System - East Lansing, MI  
Michigan Organic Food and Farm Alliance - Lansing, MI  
Midwest Organic and Sustainable Education Service (MOSES) - Spring Valley, WI  
National Catholic Rural Life Conference - Des Moines, IA  
National Center for Appropriate Technology - Butte, MT; Fayetteville, AR; Davis, CA  
Northeast Organic Dairy Producers Alliance - Deerfield, MA  
Northern Plains Sustainable Agriculture Society - Fullerton, ND  
Ohio Ecological Food and Farm Association - Columbus, OH  
Organic Farming Research Foundation - Santa Cruz, CA  
Rural Advancement Foundation International, USA (RAFI-USA) - Pittsboro, NC  
Sierra Club Agriculture Committee  
Union of Concerned Scientists Food and Environment Program - Washington, DC  
Virginia Association for Biological Farming – Lexington, VA  
Wild Farm Alliance – Watsonville, CA

**NSAC COMMENTS ON THE CONSERVATION STEWARDSHIP PROGRAM  
INTERIM FINAL RULE**

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## I. RECOMMENDATIONS REGARDING NRCS REQUESTS FOR COMMENTS ON SPECIFIC ISSUES

### A. Appropriate Distribution of Payments

**NRCS Question:** What is the proper distribution of CSP annual payment between payment for additional activities and payment for existing activities? (IFR Preamble at p. 37505).

**NSAC Recommendation:** Every aspect of the CSP regulation and program design, including payments, should keep the weight between existing and new conservation activities in balance, with the sole measure being the environmental benefits secured by the total conservation system regardless of the timing of adoption of or improvement to various parts of the system. The goal should be to promote and secure the very best land and environmental stewardship possible, sending a consistent message that real, ongoing, and cumulative outcomes are valued and will be rewarded.

The 2008 Farm Bill provisions for the CSP conservation stewardship plan and conservation stewardship payments clearly and unequivocally include both conservation measures and systems in place at the time the contract is accepted by USDA *and* conservation measures and systems adopted subsequent to the acceptance of the contract by USDA.

The new CSP is designed “to encourage producers to address resource concerns in a comprehensive manner (1) by undertaking additional conservation activities; *and* (2) by *improving, maintaining and managing existing conservation activities.*”<sup>1</sup>

The definition of “conservation plan” provides that the plan “. . . includes a schedule and evaluation plan for the planning, installation, and management of the new *and existing conservation activities.*”<sup>2</sup>

Existing activities must be sufficient to address at least 1 priority resource concern to the stewardship threshold level and the conservation stewardship plan must “meet or exceed the stewardship threshold for at least 1 priority resource concern by the end of the stewardship contact by (A) installing and adopting additional conservation activities; *and* (B) *improving, maintaining, and managing conservation activities in place at the operation of the producer at the time the contract offer is accepted by the Secretary.*”<sup>3</sup>

CSP applications are to be ranked based in part on: “(A) the level of conservation treatment on all applicable priority resource concerns *at the time of application.* . . . ; (B) the degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance. . . .”<sup>4</sup> Moreover, the other two ranking factors – the number of priority resource concerns and other resource concerns for which the farmer will meet or exceed the stewardship threshold – take into account both the active management of existing conservation activity and the adoption of new conservation activity.

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<sup>1</sup> Food Security Act of 1985, § 1238E(a), to be codified at 16 U.S.C. § 3838e (emphasis added).

<sup>2</sup> Food Security Act of 1985, § 1238D(3)(D), to be codified at 16 U.S.C. § 3838d (emphasis added).

<sup>3</sup> Food Security Act of 1985, § 1238F(a), to be codified at 16 U.S.C. § 3838f (emphasis added).

<sup>4</sup> Food Security Act of 1985, § 1238F(b), to be codified at 16 U.S.C. § 3838f (emphasis added).

Finally, and most importantly for the question of the proper distribution of payments, the Secretary is directed to provide CSP payments to compensate the producer for: “(A) installing and adopting additional conservation activities; *and* (B) improving, maintaining, and managing conservation activities in place at the operation of the producer at the time the contract offer is accepted by the Secretary.”<sup>5</sup>

It is clear that Congress intends for CSP eligibility, ranking, and payments to reflect both the active management and maintenance of existing conservation effort and the adoption new or improved conservation efforts. There is good reason for that program design choice. The CSP is unique among federal conservation programs in that it focuses on environmental outcomes, not on the timing of when conservation activities are initially adopted. If a farmer has previously adopted advanced conservation measures and systems, the program is designed to reward that behavior and help pay for continued active management and maintenance of those systems and practices no less so than the future adoption of the same measures, provided the farmer adopt one or more new conservation enhancements.

This comprehensive approach to conservation assistance is a critical element of CSP in achieving the ultimate goal of resolving specific resource concerns relevant to farming in the location of specific farms. This approach recognizes the reality that many conservation measures require ongoing costs and ongoing labor and management time for farmers to maintain them. The CSP does not provide an open-ended payment to all existing conservation measures – it is directed at providing payments for existing and new conservation measures that will address specific, identified resource concerns relevant to the location and management of a particular farming operation, and it excludes measures that incur no net cost. It provides a realistic, common-sense approach to conservation assistance that enables a farmer to integrate conservation assistance into the entire farming operation.

In addition, this comprehensive approach recognizes and rewards farmers already practicing superior land stewardship. Other USDA farm and conservation programs penalize these conservation leaders by excluding them or ignoring their contributions to resource protection, a poor signal to others about the value of farmers’ individual efforts for good conservation work. Now more than ever we need to get the signals sent to farmers lined up correctly on the side of urgently needed environmental protection and enhancement.

## **B. Appropriate Weighting of the Five Ranking Factors**

***NRCS Question:*** Which CSP Policy Option best enables NRCS to meet CSP’s program objectives? What is the appropriate weighting of the five ranking factors to maximize cost-effectively environmental benefits while maintaining consistency with the statutory purposes of the CSP? (IFR Preamble at p. 37503, and Summary of Provisions at Sec. 1470.20)

***NSAC Recommendation:*** In keeping with the principle of equal weighting to existing and new conservation activities in program design articulated above, the first two ranking factors should remain equally weighted. As between the third and fourth ranking, we would support a differential, with the weight for meeting or exceeding the stewardship threshold on priority

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<sup>5</sup> Food Security Act of 1985, § 1238G(e)(1), to be codified at 16 U.S.C. § 3838g (emphasis added).

resource concerns receiving a higher percentage than for other resource concerns. We therefore recommend a weighting of 30-30-25-15 for the four factors, respectively.

We take alarmed note of the agency's statement in the preamble that "NRCS is giving strong consideration to policy option PO-3 and PO-4 for subsequent signup periods." We strongly urge you to not take that approach. We recommend against it for a variety of reasons:

- PO-3 would violate any semblance of attention to the statutory directives (see answer to Question A above) to focus the program on both ongoing and new conservation; adoption of PO-4 would result in a program that was, in essence, no longer CSP, but rather a variant of EQIP.
- All four options, including PO-3 and PO-4, suffer from an extreme imbalance of weighting relative to Congress' clear decision to provide explicit ranking criteria; some limited variation in scoring weights may be justified, but the extreme variation of the simulation would be at odds with the statute.
- The analysis of PO-4 (and PO-5) seems to have been based on a wrong assumption about these ranking factors, as revealed by footnote 2 at the bottom of 37501 which seems to suggest that the factors measure only "additionality;" in actuality the relative contribution of existing and new conservation to factor 3 and 4 will vary greatly by each particular farm and situation.
- PO-4, while keeping ongoing and new conservation fully in the mix, suffers from an overemphasis on minimum treatment of resource concerns rather than the scope and extent of resource treatment; while comprehensive plans and applications are to be applauded and given strong weight, adoption of PO-4 would tend to reduce total environmental benefits obtained by greatly de-emphasizing scope and management intensity.
- Some of the information that went into the simulation no longer matches program implementation specifications, so its conclusions no longer necessarily apply; also, the division between crop, pasture, and rangeland assumed in the simulation appears to be radically different than the land use types represented in the 2009 applications.

Our proposal (above) would keep the intended balance between existing and new conservation activity and would give those total ranking points for total conservation performance just slightly more weight than the scope of the application in addressing all priority resource concerns. However, it would appropriately provide more weight to priority resource concerns for the watershed or state and slightly less weight to the other resource concerns.

We would argue against going lower than our recommendation on the fourth factor, however, because it remains important to encourage farmers to address site-specific resource concerns on their farms and to address cutting edge environmental issues even if those concerns and issues are not currently ranked as the top concerns of the watershed or state.

We believe our proposal achieves the appropriate balance between the ranking factors and we encourage its adoption for 2010. Based on evaluation after the 2009/10 sign-ups of the first 25 million acres to enter the program, further fine-tuning may then suggest itself.

### C. Payment Constraint and Payment Equity Considerations

**NRCS Question:** How should NRCS address program acreage and payment constraints, refine their payment approach, and make annual payments more consistent and predictable? (IFR preamble at p. 37505)

**NSAC Recommendation:** Payment constraints should be addressed in part by enrolling considerably more grassland than is assumed by the economic analysis, but rather is more in keeping with 2009 applications by land use type. Payment constraints should also be addressed by allowing for year-to-year flexibility in meeting the statutory average per-acre payment cap over the full nine year period provided by statute.

Payment equity should be improved by ensuring that conservation enhancements score higher than related but more basic conservation practices and that point values for existing conservation score in appropriate equivalency to new conservation. Moreover, the baseline portion of the CMT should allow farmers to accumulate points for the full range of conservation practices and enhancements that are in the non-baseline portion of the CMT.

Ever since NRCS aggressively and successfully pressed for the average per acre payment cap now in statute during congressional consideration of the Farm Bill, we have tried to encourage lower cost grassland enrollments. Our fear has always been that the agency leadership at the time of the farm bill debate was unrealistic in their economic recommendations. It is, therefore, surprising to read the economic analysis summary in the IFR making the same comment as we made during farm bill consideration. It would have been helpful if this analysis had informed the stance taken by the Department during the farm bill proceedings.

But that is now water over the dam. Given the existing reality, NRCS should aggressively design and promote the program to ensure sufficient rangeland participation to allow for higher average cropland payment rates than would be the case if the ratios were like the assumptions in the economic analysis. We are encouraged by the amount of range and pasture represented by 2009 initial applications and we urge a continued focus on improving baseline assessment questions and eligible enhancements and practices to have wide appeal to grass-based agriculture.

It is important to remember what the statutory guideline is and is not with respect to the per-acre average. First, the average acreage amount is to be achieved “to the maximum extent practicable.” It is not a rigid, absolutely fixed amount that needs to be engineered and micro-managed as if complex program sign-ups were a simple mathematical formula. Second, it applies not on a year-by-year basis, but rather as a management function during “the period beginning on October 1, 2008, and ending on September 30, 2017”<sup>6</sup> Year-to-year variation is thus anticipated by the statute. Both of these aspects of the statute suggest there are reasonable grounds for a reasonable degree of flexibility in the management of the program with respect to payments.

There are some serious remaining payment equity problems related to the Conservation Measurement Tool as it currently exists. In our view, some of the point values need to be re-examined and reworked. In general, conservation enhancements, which by definition “are applied in

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<sup>6</sup> Food Security Act of 1985, § 1238G(d), to be codified at 16 U.S.C. § 3838g.



a manner that exceeds the minimum treatment requirements of the (conservation practice) standard”<sup>7</sup> if they related directly to the practice, should receive considerably more points than the corresponding basic conservation practice. Though logical, that has not always been the outcome to date. Two prime examples are management intensive rotational grazing/prescribed grazing and resource-conserving crop rotations/conservation crop rotation. In the first case, the enhancement scores far less than the practice and in the second case they score nearly the same. These errors and others like them need to be corrected before the 2010 sign-up is in full swing.

In addition, the full range of conservation enhancements and practices need to be reflected in the baseline assessment of existing conservation activities that will be maintained and actively managed during the contract period. As it stands now, many of the choices available to farmers and ranchers in the new enhancement and practice portion of the CMT are not available as choices in the baseline assessment. This problem also needs to be corrected before the 2010 sign-up is in full swing.

Moreover, the point values that ultimately determine payment rates are out of balance between the baseline and the enhancement/practices. There is good reason for payment rates to be higher for new adoption relative to management and maintenance. While forgone income and environmental benefits will generally be the same, cost is higher for adoption and some discount is therefore appropriate for the baseline. However, the ratio needs to reflect something reasonably akin to actual differences in costs, as factored over the 5-year contract period.

Currently there are point values that are off by very large factors, well beyond any possible justification based on cost. For instance, NRCS estimates the payment range for newly adopted resource-conserving crop rotations at \$12-16 per acre, yet the payment for an existing resource-conserving crop rotation as reflected in the baseline assessment points could be as low as \$1 per acre. This is a fundamental flaw in the current CMT that needs to be quickly addressed and remedied before the 2010 enrollment process gets underway. We have previously suggested different ways to fix this problem to the agency, and we are very interested in continuing to pursue practical solutions.

Ideally, beyond the immediate press of the 2010 sign-up, the baseline assessment portion of the CMT should be completely overhauled. Designed as a simple tool to determine eligibility, it has now been pressed into awkward service for a very different role in relation to ranking and payments. The agency has done an admirable job in trying to fit the square peg in the round hole, but for the long-term health and effectiveness of the program it would be better to match the tool to the job.

#### **D. Number of Resource Concerns to be Met**

**NRCS Question:** Is meeting the stewardship threshold on one resource concern and one priority resource concern sufficient or should that number be greater than one? (Summary of Provisions at Sec. 1470)

**NSAC Recommendation:** Congress did not provide the Department with the authority to fix a number greater than one, so it would be advisable to leave the provision as it currently reads in the IFR.

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<sup>7</sup> NRCS, Conservation Stewardship Program Interim Final Rule, Vol. 74 at 1740.3 (July 29, 2009)

The statute provides a choice to the applicant to address one or more resource concerns as a condition of eligibility and requires them to choose one more priority resource concern to address either at the outset or during the first contract term, but does not provide discretion to the Department to require more. Therefore we do not recommend the agency consider changing the IFR provision.

While we supported a higher number during consideration of the farm bill for the number at the end of the first contract period, we believe that maintaining adequate weighting of ranking factors 3 and 4 (see answer to Question B above) will counteract any problem caused by the statutory eligibility standard. Ranking factors 3 and 4 give producers a much greater chance of being accepted into the program if they are already addressing or will agree to address more resource concerns to levels at or above the stewardship threshold.

It is not clear to us why the final bill did not require at least one *priority* resource concern to be fully addressed upfront rather than just any resource concern, but until such time as the law is changed, the agency should focus its attention encouraging more comprehensive conservation treatment by means of keeping substantial weight on all of the first four ranking factors, including factors 3 and 4.

#### **E. Wildlife Habitat Requirement**

***NRCS Question:*** Should at least one of the priority resource concerns be identified to specifically address wildlife habitat issues? (Summary of Provisions at Sec. 1470)

***NSAC Recommendation:*** First, we recommend that biodiversity and fish, wildlife, pollinator, and beneficial insect habitat be specifically added as priority resource concerns to be addressed by CSP.

Second, we urge the agency to very strongly encourage, but not absolutely mandate that one or more wildlife habitat resource concerns be included among the up to 5 priority resource concerns in each watershed or state.

As presented, the IFR and program design very significantly rewards biodiversity and wildlife habitat measures. However, the conservation activities for habitat are currently listed under the priority resource concerns labeled “plants” and “animals.” This has proven to be problematic, as most people outside the agency do not think in terms of addressing and solving the plant resource concern or the animal resource concern. The language, while no doubt near and dear to internal agency SWAPA fans, is getting in the way of program management and public outreach.

We therefore believe the list of potential priority resource concerns for the CSP should include both biodiversity and wildlife habitat. The final CSP rule and program guidance should substitute ‘biodiversity’ and ‘wildlife habitat’ for ‘plants’ and ‘animals’ as the more appropriate name for the underlying resource concern, and should make clear that the term wildlife is being used as inclusive of fish and pollinators/beneficial insects.

We believe that the change from plants and animals to biodiversity and habitat will, by itself, increase the likelihood of one or both being chosen as priority resources of concern in a given geographic area, putting them on a more even rhetorical and substantive playing field with soil quality, soil conservation, water quality, water conservation, air quality, and energy conservation.

However, we also are supportive of direct encouragement from headquarters to state offices to consider wildlife habitat and biodiversity among the serious candidates for priority resource concerns. We would go as far as recommending that one or more resource concerns related to biodiversity or habitat always be included in the priority list for every state or watershed except when the state office makes a compelling case that five other resource concerns clearly trump such considerations in a specific geographic area. We would therefore not support an absolute, no-exceptions mandate, but would support strong encouragement.

## F. Contract Renewal Requirements

***NRCS Question:*** What criteria should apply to CSP contract renewal? (IFR Preamble at p. 37505)

***NSAC Recommendation:*** The contract renewal language needs to be much clearer and more explicit in the final rule. As a condition of eligibility for renewal the participant should be required to meet or exceed the stewardship threshold for at least two additional priority resource concerns during the second contract term, provided they are not already exceeding the threshold for all or at least four priority resource concerns. In addition, the requirement to adopt additional conservation activities should be tied directly to the requirement to meet or exceed the threshold on those additional priority resource concerns.

We also strongly recommend the agency reconsider its rigid formulation that new land acquired by the operator can only be brought into the program at the 5-year renewal time. We urge that provision be made to allow participants the option of entering new land during the contract period provided that a new amalgamated CMT score would be at least as high as the CMT scoring cut-off point for acceptance in the original enrollment period.

Contract renewal is a critical and essential part of the program. It is important therefore for the rule to be clear and precise. While the statute does not specify that additional priority resource concerns be addressed at renewal, we would nonetheless support that concept and its retention in the final rule. Importantly, the Statement of the Managers also suggests this as an available option: *“The Secretary is provided authority to require new conservation activities as part of the contract renewal process. It is the intent of the Managers that this could include expanding the degree, scope, and comprehensiveness of conservation activities adopted by a producer to address the original priority resource concerns or **addressing one or more additional priority resource concerns.**”*<sup>8</sup>

It is very important, however, that such a provision in the final rule be stated clearly and not be an open-ended commitment to an unlimited number of resource concerns, which is how the IFR reads now. The final rule should specify that the participant agree to “meet or exceed” (the IFR only says “meet”) the stewardship threshold for at least two additional priority resource concerns. This in our view is a logical renewal requirement. Under the first contract, the participant needed to be at or above the threshold for one resource concern at the time of enrollment and reach that level on at least one additional priority resource concern during the contract period, for a total minimum of two resource concerns. Therefore requiring two more during the second contract period continues the same requirement as the first contract period and neatly embodies the CSP commitment to continual improvement.

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<sup>8</sup> House Conference Report No. 110-627, Food, Conservation, and Energy Act of 2008 (110<sup>th</sup> Congr., 2d Session) at p. 720. (emphasis added)

However, if the participant is already in compliance with this requirement for all 3 priority resource concerns in a 3-priority watershed, or already in compliance with 4 or 5 priority resource concerns in a 4 or 5-priority watershed, then the rule should clearly state that no additions are required. In other words, the renewal requirement should be that before the end of the second contract, at least 4 priority resource concerns should have been addressed at or above the stewardship threshold, except in the case of a watershed with only 3 priority resource concerns, in which case it should be 3 out of 3. Alternatively, we would also support the idea that in a 3-priority watershed, the renewal requirement would be 3 out of 3 plus a fourth non-priority resource concern.

The vague IFR requirement at 1470.26(b)(4) that the participant agree to adopt conservation activities as determined by NRCS should also be improved and clarified. The required additional conservation activities should be directly related to the actions required that enable the participant to meet or exceed the stewardship threshold on the additional priority resource concerns, and the final rule should clearly state that connection. The wording of the final rule should make clear that the choice of which eligible activities to select for improvement or adoption should remain with the participant and will not be prescribed by the agency.

The IFR decision to allow newly acquired or newly rented land to only be brought into the contract at 5-year intervals is disappointing. We do not support the idea of new, additional land being brought into the program *carte blanche*, but we do believe a fair, workable and less rigid approach is possible and advantageous. It would be relatively easy and abuse-free to allow participants to complete an amended CMT, making changes in the CMT only relative to the new land, and then to score the revised CMT and allow the contract to be revised for the remainder of the 5-year contract provided the new CMT score is equal to or greater than the ranking point cut-off level for contracts signed when the participants contract was originally accepted.

This approach provides assurance that the revision is providing real and substantial environmental outcomes and that the additional land would have been accepted under the scoring cut-off of the original enrollment cohort. We note that this proposal is entirely in keeping with the statute, which simply says: “*The Secretary may allow a producer to modify a stewardship contract if the Secretary determines that the modification is consistent with achieving the purposes of the program.*”<sup>9</sup> We also note that the approach we are suggesting was specifically referenced in the Managers language:

*“The Secretary may allow for contract modification if the Secretary determines that a modification is consistent with achieving the purposes of the program. Modifications envisioned by the Managers include instances in which a producer enrolls a portion of the farm in a land retirement or easement program, **gains or loses a lease**, or has a change in production due to market or weather conditions. The Managers also intend for the Secretary to issue guidance for cases in which a producer has a change in production that requires a change to scheduled conservation practices and activities. **The Managers expect the Secretary to approve the contract modification only as long as net conservation benefits will be maintained or improved as a result.**”<sup>10</sup>*

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<sup>9</sup> Food Security Act of 1985, § 1238F(f), to be codified at 16 U.S.C. § 3838f.

<sup>10</sup> House Conference Report No. 110-627, Food, Conservation, and Energy Act of 2008 (110<sup>th</sup> Congr., 2d Session) at p. 720. (emphasis added)

We urge the Department to adopt this fair and more flexible approach, in keeping with congressional intent as expressed in the conference report. This change will make the program more farmer-friendly while at the same time reaping the environmental benefits and outcomes more quickly.

Please note that in addition to the IFR contract renewal section (1470.26), the change we propose would require a minor conforming change to 1470.25 (b).

## **G. Additional Innovative Enhancements**

***NRCS Question:*** What innovative enhancements should NRCS offer to improve participant's conservation performance? (IFR Preamble at 37505)

***NSAC Recommendation:*** After review and evaluation of the 2009 sign-up, we will resubmit to the agency a revised list of innovative enhancements we recommend be added to the current list, and possibly some enhancements to consider removing or changing. In the meantime, we encourage the agency to develop the additional enhancements we previously submitted.

We urge you to develop the enhancements we previously submitted to the agency that were not able to be included for 2009 due to time constraints, including:

- Whole Farm Energy Efficiency/Conservation Audit and Implementation;
- Working Buffers Managed for Mixed-Perennial Energy Crops;
- Field Sanitation to Remove Disease Vectors and Habitat for Pests;
- Adopt or Extend Buffer Zones and Field Margins to mitigate pesticide drift and transgenic pollen drift, provide habitat, conserve moisture, and prevent erosion;
- Diversify Existing Warm-Season Native Grass Plantings with additional seedings of properly inoculated native legumes and forbs, using fire and grazing management as part of the seeding management.
- Nursery Plantings for Local Eco-type Native Prairie Seed Production
- Nursery Plantings for Native Shrubs and Trees to be replanted as wind breaks, alley cropping, buffer plantings, etc.
- Organic Invasive Species Controls
- On-Farm Composting Systems Management and Utilization to manage 100% of animal manures, crop wastes, and other farm-generated materials, and improve soil quality
- Measured Increases in Soil Organic Matter

We also want to bring to your attention a proposed additional baseline question and enhancement brought to our attention by farmers in arid wheat growing regions – Farming Terraced Land. Although SCS and NRCS cost share funds often helped with terrace construction, producers using terraces paid significant additional costs entirely on their own. Properly farming terraced fields requires operations to be performed on small, oddly shaped patches; increasing time, fuel and machinery requirements by 25 to 50 percent. In addition, farming terraced land requires specialized equipment, further increasing costs. Farming terraced land is a significant conservation practice that needs to be recognized and rewarded in the new Conservation Stewardship Program.

Another missing ingredient within the CMT baseline questions is management for the control of wind erosion. This is an important issue in the western Great Plains and parts of the Pacific Northwest and should receive due consideration in the baseline questions and baseline points.

In general, more enhancements are needed for the energy resource concern, for the soil erosion resource concern, for the rangeland and forest land use types, and for land leaving the Conservation Reserve Program that could be enrolled in CSP to maintain conservation values. Each of these areas is to one degree or another underdeveloped currently.

With respect to energy, current enhancements encourage water pumping plants powered by renewable energy and solar powered electric fence charging systems, but it is not clear why CSP enhancements should be limited to just these two specific applications. We encourage a retooling of the energy section of the CMT to be much more expansive with respect to on-farm energy generation and conservation to include the powering of all equipment, machinery, and buildings and facilities.

In addition, we suggest that consideration be given to eliminating enhancements which score below a certain minimum threshold point value. The current list includes several enhancements that score in the very low single digits that perhaps should not be continued into the future.

## **H. State Allocation Factors**

***NRCS Question:*** Which factors should be used to distribute allocations of CSP acres among the states? (IFR Section 1470.4 Allocation and Management)

***NSAC Recommendation:*** We are in basic agreement with the IFR on allocations, but urge sparing use of the additional considerations beyond the State's proportion of eligible land.

The farm bill is clear that the simple allocation formula based on the State's proportion of eligible land is to be the primary allocation factor. We therefore urge you to make only modest adjustments, if any, in the allocations to take into account the discretionary additional considerations. In the near term, any such modest adjustments should be based on both a clear and convincing need and on the proven effectiveness of the State in delivering the program. In the longer term, greater adjustments may need to be made more frequently as State differentials in the levels of previous success enrolling producers come into play. But for the early rounds, we suggest hewing close to the basic allocation formula.

## II. ADDITIONAL NSAC RECOMMENDATIONS ON THE CSP IFR

### A. Acreage Roll Over

**NSAC recommends that the final rule stipulate that all acres made available to the program in the 2008 Farm Bill remain with the program without regard to year-to-year fluctuations in meeting and retaining the statutory target of enrolling an additional 12,769,000 million acres each fiscal year.**

The 2008 Farm Bill provides the authority and funding to enroll to the extent practicable an additional 12,769,000 acres each fiscal year beginning on October 1, 2008 and ending on September 30, 2017.<sup>11</sup> Thus, USDA is authorized to enroll a cumulative total of over 51 million acres through 2012 and nearly 115 million acres through 2017. The provision in the Farm Bill does not expressly limit the acreage that can be enrolled in any given year to the 12,769,000 million acres but instead provides 12,679,000 million acres per year as the target for incrementally increasing the program acreage each year.

The CSP IFR does not make clear that the total CSP acreage remains available to the program if in any given year the full 12,769,000 acres are not enrolled or if contracts are voided prior to the end of the 5-year contract term. Fluctuations in meeting the target acreage from year-to-year are to be expected. Death or illness in a family or natural disasters such as drought or flooding may preclude a farm operation from continuing in the CSP. Changes in land ownership or tenure are also quite likely to occur in some small but significant percentage of contract situations.

NSAC recommends that the CSP Final Rule clearly provide that all acres made available to the program in the Farm Bill remain with the program. A provision should be added to 1470.2 to state this clearly and unequivocally.

### B. Payment Limits

**NSAC recommends that the final rule retain the payment limitation of \$40,000 per year per person or legal entity for all contracts (or \$200,000 in any 5-year period) and the \$200,000 limit on each CSP contract, as well as the requirements that applicants be the operator in the FSA farm records management system and that contract applications must include eligible land on an applicant's entire agricultural operation. We also recommend an addition to the rule to make CSP contracts and payments subject to the FSA "actively engaged in farming" rules.**

The CSP IFR payment provision at Section 1470.24(f) includes the statutory limit on CSP payments of \$200,000 for all contracts entered into in a 5-year period, with some specific exceptions as provided in the 2008 Farm Bill.<sup>12</sup> In addition, Section 1470.24(f) includes a yearly upper limit of \$40,000 per year per person or legal entity for all CSP contracts and Section 1470.24(g) includes a limit of \$200,000 for each conservation stewardship contract over the term of the initial contract period.

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<sup>11</sup> Food Security Act of 1985, § 1238G(d)(1) to be codified at 16 U.S.C. § 3838g.

<sup>12</sup> Food Security Act of 1985, § 1238G(g) to be codified at 16 U.S.C. § 3838g.

These additional limitations are a reasonable exercise of the Secretary's authority under the 2008 Farm Bill to prescribe other CSP regulations as the Secretary determines to be necessary to ensure a fair and reasonable application of the statutory limitation of \$200,000 on CSP payments for all contracts entered into in a five-year period.<sup>13</sup>

The \$40,000 per year limit ensures that the CSP incentives for conservation are spread across the life of the CSP contract, which can be especially important as an incentive for sound management and maintenance of CSP conservation practices which may be established early in the CSP contract. The per-year limit is also consistent with the decision to implement the CSP payment provisions with a consistent payment amount each year.

The \$200,000 limit for each stewardship contract ensures that large amounts of CSP resources are not misallocated to large joint operations. For the program to work as intended, with a per-farm per-contract term limit of \$200,000, a combination of the requirements is critical. Applications and contracts must include the entire agricultural operation. The applicant must be the operator of record. There must be a contract limit of \$200,000.

Finally, the FSA "actively engaged in farming" rules should apply. The actively engaged rules include crop share landlords and tenants as actively engaged, but reduce the ability of absentee investors to benefit and reduce the opportunity to create "paper" farms whose only purpose is to enable the beneficiary to collect payments in excess of the payment limit through well-established payment limit avoidance devices that will not be captured by direct attribution. A reference to the actively engaged in farming rules applying to CSP should be added between current paragraphs (g) and (h) in 1470.24. In addition, the definition of "producer" in 1470.3 should be modified to say "*actively* engaged in agricultural production or forest management" instead of just "engaged."

In sum, we urge the agency to retain each of the payment limit provisions in the IFR as well as the whole agricultural operation contract requirement and the operator of record requirement in the final rule. We also urge that the final rule apply the FSA actively engaged in farming rules to CSP as a critical, missing final ingredient to this set of provisions. We have no doubt the agency will be hearing from organizations and individuals arguing against the contract limitation and/or arguing against the application of the entire agricultural operation provision as a contract requirement. The intent of those arguments will be to open the door to larger payments for larger farms than the \$200,000 limit would otherwise allow. We urge you to resist those calls for end runs around the payment limit.

### **C. Minimum Contract Payment**

**NSAC recommends that the CSP final rule include a minimum contract payment provision to encourage participation of small acreage farms and gain the environmental benefits from the enrollment of large numbers of smaller farming operations.**

According to the 2007 Census of Agriculture, about 54 percent of U.S. farms range in size from 1 to 99 acres. Many of these farms provide high-value specialty crops and others are owned by beginning farmers just starting to establish their own operations, farms which were targeted by

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<sup>13</sup> Food Security Act of 1985, § 1238G(h) to be codified at 16 U.S.C. § 3838g.



Congress in the CSP for special consideration and outreach by USDA. In addition, small acreage farms are not distributed uniformly around the U.S. New England, the Mid-Atlantic, and the Appalachian regions, whose farmers historically have not participated in farm bill conservation programs at the same rate as farmers in other regions, have a preponderance of smaller operations. Providing additional incentives to these farmers will help meet the directive of the Managers of the 2008 Farm Bill that the Secretary achieves equitable geographic distribution of CSP funds.<sup>14</sup> In addition, even though the acreage per farm may be relatively small, the cumulative impact of CSP improvements on thousands of these farms would be highly significant.

CSP payments provided on a per acre basis on small acreage farms may not provide sufficient incentive for a farmer to expend the time needed to analyze the farming operation, enroll in the program, create a CSP plan, and absorb the initial cost of increasing conservation activities on the farm. Therefore, NSAC recommends that the CRP Final Rule include a new statement in 1470.24 that there will be a floor or minimum annual payment amount to be determined by NRCS. We also recommend that for 2010 the minimum payment amount be set at \$1,500 and then evaluated after the 2010 sign-up to determine whether or not that rate should be adjusted in future years.

#### **D. Resource-Conserving Crop Definition**

**NSAC recommends that NRCS revise CSP final rule definition of resource-conserving crop rotation by using the definition provided in the Conservation Security Program in that program's 2005 Interim Final Rule which defines a resource-conserving crops within the definition for resource-conserving crop rotation as “ . . . . a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.”<sup>15</sup>**

The 2008 Farm Bill includes a special supplemental CSP payment for resource-conserving crop rotations (RCCRs), which recognizes the important role that complex crop rotations can play in improving the environmental performance of land in agricultural production.<sup>16</sup> We are supportive of this special supplemental payment and we also strongly support the addition of high ranking and payment points for existing RCCRs within the baseline assessment of the CMT. Amendments to the 2009 sign-up version of the CMT will be needed to provide a significant boost to the point value of existing RCCRs that are actively managed and maintained, and we urge the agency to take care of that task right away.

We strongly object, however, to the definition of resource-conserving crop in the IFR and to the job sheet for RCCRs for the 2009 sign-up. In addition to a perennial grass, legume, or grass/legume grown for use as forage, seed for planting, or green manure, the IFR includes any high-residue producing crop and any winter cover crop as qualifying RCCs in the context of a short rotation for the RCCR supplemental payment. The job sheet, moreover, allows for any two-crop rotation with no perennial provided there is a winter cover crop, and any three-crop rotation with no perennial provided one is high residue.

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<sup>14</sup> House Conference Rpt No. 110-627, Food, Conservation, and Energy Act of 2008 at p. 721.

<sup>15</sup> NRCS, Conservation Security Program Interim Final Rule, 70 Fed. Reg. at 15215 (March 25, 2005).

<sup>16</sup> Food Security Act of 1985, § 1238G(f), to be codified at 16 U.S.C. § 3838g.

The second two elements of the definition and the second two options in the job sheet defeat the purpose of the farm bill provision and should be removed. They do not provide a sufficient level of environmental benefit to qualify for supplemental payments. Moreover, both residue management and winter cover cropping are already eligible enhancements and practices in the approved list of enhancements and practices. There is therefore no reason to allow producers with those conservation activities already accounted for to double dip and obtain the supplemental payment as well.

This is particularly alarming given the particular choices in the job sheet, which would allow two commodity program crops in the second instance, and three commodity program crops in the third instance, to qualify as RCCRs. Not only could a producer in that instance double dip within CSP, but they could also devote all or most of their land to the production of crops receiving commodity subsidy support (crops subject to compliance requirements most frequently met by residue management already) and still get an additional supplemental payment. Last but not least, the current definition contradicts the clear directive from the 2008 Farm Bill Managers that they “. . . do not intend for the Secretary to pay for no-till or other common practices that have no cost to the producer”<sup>17</sup> at least for those regions where no-till with residue management is a cost saver.

The IFR and job sheet on this point represent an extreme overuse of taxpayer support for nebulous additional environmental benefit. It also represents an unneeded and unwarranted pressure on the payment constraints already present in the program (see I.C. above).

Adding insult to injury, the job sheet also requires those adding a perennial to their rotation to do so for a two-year duration minimum. There are tangible environmental benefits to be gained from even one year, yet at the same time the job sheet “dumbs down” the RCC requirement for residue management on the one hand, it creates an unnecessary hurdle to much needed increases in perennials on the other. We urge you to replace the two-year minimum requirement with a graduated three-option approach, with one, two, or more than two years as options that result in increased point values with increased years.

We recommend that in the final rule NRCS adopt the definition for RCCR provided in the 2005 Conservation Security Program, but separate it into two definitions -- one for RCC and one for RCCR -- if that is preferred by the agency. The 2005 IFR language reads as follows:

*Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.*<sup>18</sup>

Using that definition, the RCCR job sheet should be revised to eliminate the option for 2 program crops with a cover crop, and option for 3 program crops with no cover crop. The resulting RCCR supplemental payment would thus be for putting hay/forage/perennial grass and/or legumes in the system, with reduction of the number years from 2 years to 1 year as minimum requirement, but

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<sup>17</sup> House Conference Report No. 110-627, Food, Conservation, and Energy Act of 2008 (110<sup>th</sup> Congr., 2d Session) at p. 722.

<sup>18</sup> NRCS, Conservation Security Program Interim Final Rule, 70 Fed. Reg. at 15215 (March 25, 2005).

with graduated payment levels based on the number of years the resource-conserving crop is in the rotation.

#### **E. Land Transitioning from CRP**

**NSAC recommends that NRCS allow a farmer to apply for CSP enrollment on land enrolled in a Conservation Reserve Program (CRP) contract which is expiring at the end of the fiscal year in which the farmer applies for CSP enrollment. If the CSP contract is accepted by the Secretary, CSP payments in the first fiscal year of enrollment would be contingent on the expiration of the CRP general sign-up contract and the cessation of CRP payments on the land enrolled in the CSP. A specific provision for this situation should be added to the final rule. Additional enhancements that are geared in particular for land transitioning from the CRP should also be added to the approved enhancement list.**

In the Conference Report accompanying the 2008 Farm Bill, the Managers encourage the Secretary to conduct outreach to encourage producers who are transitioning land out of the general sign-up component of the Conservation Reserve Program and back into agricultural production to protect conservation values by enrolling in the CSP. The Managers further urge the Secretary to encourage the producers to maintain the land in a grass-based production system with appropriate wildlife protections through CSP or to adopt advanced resource-conserving crop systems through the CSP in tandem with placing conservation buffers and other appropriate partial field conservation practices, farmed wetlands, or special wildlife habitat practices in the continuous CRP.<sup>19</sup>

The CSP IFR has no provision for this smooth transition from CRP to CSP enrollment. The 2008 Farm Bill does provide that land enrolled in the CRP, Wetlands Reserve Program and the Grassland Reserve Program are not eligible for enrollment in the CSP,<sup>20</sup> restrictions which are included in Section 1470.6(c)(1)-(5). This restriction on simultaneous enrollment of land need not, however, prevent the Secretary from accepting CSP applications on land enrolled in the CRP, provided that in the fiscal year in which the land is enrolled in the CSP, the CRP contract has expired and CRP payments are made for the land. This measure would be within the law of the 2008 Farm Bill and also meet the intent of the 2008 Farm Managers for a smooth CRP to CSP transition which protects many of the conservation values developed while the land was enrolled in the CRP.

This smooth transition will provide farmers with financial and technical resources to apply CSP conservation practices and systems at the critical point in which the CRP land is returning to production. Without this measure, there will be a *two-year lag time* before the farmer could see any CSP payments, which means that many CRP contract holders will not consider enrolling the land in the CSP and many of the conservation values obtained via CRP could be lost.

#### **F. Priority Access to EQIP**

**NSAC applauds NRCS for adding a variety of regular conservation practices to the options menu for new conservation activities within CSP. We also concur with the**

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<sup>19</sup> House Conference Report No. 110-627, Food, Conservation, and Energy Act of 2008 (110<sup>th</sup> Congr., 2d Session) at p. 722.

<sup>20</sup> Food Security Act of 1985, § 1238E, to be codified as 16 U.S.C. § 3838e.

**decision to not provide direct access to all conservation practices within CSP. However, our support is based on the understanding that those CSP participants who need access to practices not included within CSP proper in order to address priority resources of concern to levels that meet or exceed the stewardship threshold will be accorded priority access to EQIP assistance for that purpose. There is not provision for such access in the IFR and one should be added in the final rule and made operational through appropriate guidance and website information.**

The provision for access to EQIP support for practices that directly contribute to a CSP participant's ability to meet or exceed stewardship thresholds is an important needed addition to the rule. It will allow CSP to function properly despite the agency decision to limit direct CSP support for established conservation practices. It will also be an excellent use of EQIP dollars as it will be directed at meeting the stewardship threshold for priority resource concerns for the state or geographic area within the state. To function properly, the crosswalk to EQIP needs to function smoothly and seamlessly from the farmers' vantage point. Hopefully NRCS can design a process that eliminates all unnecessary redundancy and paperwork in the sign-up process. We urge NRCS to have this process ready for the 2010 sign-up period.

#### **G. Beginning and Socially Disadvantaged Farmer and Rancher Set-Asides**

**NSAC recommends that 1470.2(e) and 1470.20(f)(3) be revised to establish that the 5 percent set-aside for beginning farmers and ranchers and for socially disadvantaged farmers and ranchers are target floors, not ceilings. We also recommend an addition to 1470.4(b) that provides for reallocation of SDA set-aside acres from a state not using those acres to one or more states that need additional acreage based on higher demand due to the demographics in those states.**

Potential demand for CSP acres among socially disadvantaged and beginning farmers and ranchers will likely be far greater in some states than others. Therefore, in some states target participation rates and special funding pools might usefully be higher than in others. We urge NRCS to amend the rule to clearly establish that the statutory 5 percent set-asides are minimums and not maximums. Having additional acres available in high demand states will help ensure that the nationwide target of five percent is met. NRCS headquarters should encourage states with higher levels of beginning or socially disadvantaged farmers and ranchers to pursue higher target rates and should include that concept in the CSP program manual and in CSP training.

Given the unequal distribution of minority farmers among states and regions, we believe a special reallocation process is also in order. If there are insufficient applications from socially disadvantaged farmers to meet the state target, the unused targeted acreage should first be reallocated to other states that have more applications from minority farmers than could be approved under that state's original targeted amount. Only after all such national re-pooling to meet the national CSP acreage targets for socially disadvantaged has been exhausted should there be re-pooling within the state. National re-pooling prior to in-state re-pooling will help CSP on a nationwide basis reach or exceed the five percent target.

We recommend this change be made as an addition to the generic national re-pooling provision at 1470.4(b). We also recommend a corresponding change to 1470.20(f)(5) to allow SDA re-pooling

within a State only after the Chief has determined no other State needs those acres to meet unfulfilled demand.

#### **H. Beginning Farmer and Rancher Definition**

**NSAC recommends a change in the definition of beginning farmer and rancher to make it conform to the definition of socially disadvantaged farmer and rancher with respect to entities. In both cases, entities in which at least 50 percent ownership in the farm business is held by the target population should qualify.**

There is an unfortunate mismatch in definitions for beginning and socially disadvantaged farmers which will result in reduced access to the program by beginning farmers, a group that Congress has targeted for increased participation and special incentives within farm bill conservation programs. The 50 percent ownership test that applies to socially disadvantaged farmers should also apply to beginning farmers. If beginning farmers are part of a farm business, it is far more likely that their minority partners will not be other beginning farmers but rather older or retiring farmers who are in the process of transitioning out of the business. Denying these beginning farmers access to special targeting provisions created by Congress defeats the purpose of those provisions.

We therefore urge you to delete the parenthetical statement in (1)(i) of the beginning farmer and rancher definition and in its place substitute the language found in the last sentence of the socially disadvantaged farmer and rancher definition, thus applying the same 50 percent ownership test in both cases.

#### **I. Beginning Farmer and Rancher Eligibility**

**NSAC recommends the addition of a special provision for first-year beginning farmers and ranchers in the eligibility section (1470.20(b)(1)) concerning resource concerns.**

As the farm bill and the IFR beginning farmer and rancher definition make clear, first-year beginning farmers and ranchers are eligible to participate in CSP. However, the provision at 1470.20(b)(1) requiring applicants, at the time of application, to already be meeting the stewardship threshold for at least one resource concern, by definition, would exclude first-year beginners. The resolution of this contradiction seems simple. The final rule should create a special provision for first-year beginning farmers that, in effect, combines (b)(1) and (b)(2) into a single provision, applicable only to first-year beginning farmers, that requires them to, at a minimum, meet or exceed the stewardship threshold for at least *two* priority resource concerns by the end of the conservation stewardship contract. Such a provision would retain the program's goal of assisting farmers to solve pressing resource concerns, but would do so in a manner that resolves the statutory and regulatory conflict of allowing first year farmers to participate, but then eliminating them from consideration due to one particular program rule.

#### **J. FSA Farm Records Management System**

**NSAC recommends a change to 1470.6 (a)(1) to provide needed flexibility for applicants who are acquiring new land or signing new leases, and for first-year**

**beginning farmers, to access the farm records management system and therefore be eligible to apply to participate in CSP.**

NSAC is alarmed by the number of communications we have received in the last few weeks from farmers who have had problems securing FSA farm management system operator status and numbers. Part of the problem is the very short time allotted for the 2009 sign-up and the unfamiliarity with the system on the part of farmers who are not in commodity programs. Part of the problem is also lack of information or wrong information being communicated at local NRCS offices and local FSA offices. However, part of the problem stems from the lack of clarity and flexibility in the IFR and thus in the directives sent to state and local offices.

The rule should require the eligible applicant to be the operator of record during the CSP contract period, but not necessarily before applying to participate. It is certainly not unusual for a farmer to know, and have documentation, that they will be closing on newly acquired land or signing new leases for the upcoming crop year. NRCS and FSA should jointly work out a means for those farmers who will be the operator of record prior to the start of a CSP contract term to receive the necessary credentials to apply to participate in CSP. Some simple language changes and additions to 1470.6(a)(1) would clear the way for this common sense approach to solving the problem.

It makes little sense to prevent people from even applying if they can otherwise fulfill the terms of the CSP contract and also satisfy the need to secure a farm records number for AGI purposes. Moreover, if they are prevented for doing so, but nonetheless apply to participate in CSP on their other land or lease holdings, they will actually be out of compliance with the CSP contract requirement that the entire agricultural operation be subject to the contract. It is as if they are damned if they do and damned if they don't. There is no good reason for this dilemma to be perpetuated when a simple solution is easily in hand.

The same provision also needs to be made for the first-year beginning farmer. Provided they have already secured access to land and will be in control of that land prior to the start date of the contract, they should not be prevented from securing the necessary FSA operator status for purposes of submitting the CSP application to NRCS.

Finally, we note that the FSA has been a historically problematic agency for minority and disadvantaged producers. NRCS should work with FSA to assure that all FSA field offices receive clear directives on how to assist all producers, but especially minority producers, to meet the farm records directive and assure they are not turned away from FSA offices before they get to NRCS.

**K. On-Farm Research and Demonstration Protocols and Procedures**

**NSAC recommends the addition of a new paragraph (3) in 1470.2 to stipulate that NRCS will make available to eligible applicants design protocols and participation procedures for participation in CSP on-farm research and demonstration projects. In addition, we recommend that either (a) current point values for on-farm research and demonstration be enhanced or (b) that on-farm research and demonstration be taken out of the point system for payment purposes and compensated in a more traditional manner.**

The 2008 Farm Bill, like its predecessor, provides for CSP participants to design and participate in

on-farm research and demonstration projects to further the program's objectives. Given NRCS' non-performance with the 2002 Farm Bill's provision for on-farm research and demonstration in the Conservation Security Program, the Managers of the Conference added this directive in 2008: *"The Managers expect the Secretary to establish and publicize design protocols and application and contract offer procedures for individual producer and collaborative on-farm research and demonstration activities and for pilot testing projects so producers have a clear understanding of how to participate in either of these two options."*<sup>21</sup>

NSAC applauds NRCS for referencing the design protocols and application procedures at 1470.20(b)(4) with respect to eligibility requirements, at 1470.22(a)(6) with respect to conservation stewardship plans, and at 1470.24(c) with respect to payments. However, in the administration section of the IFR there is no pro-active statement that NRCS will produce the design protocols and application procedures. We therefore urge that a new 1470.2(c)(3) be added to state that commitment.

We also call attention to the congressional directive that both individual and collective on-farm research and demonstration projects are allowed and urge you to develop the protocols and application procedures consistent with that directive.

Finally, we are concerned with the interface between the point value system for existing and new specific conservation activities and on-farm research and demonstration projects. In our view, either the point values for the latter need to be variable and project-specific and on the whole significantly higher, or this aspect of CSP needs to be treated differently than baseline activities and new enhancements/ practices with respect to payments. We lean strongly toward the latter – different and more traditional treatment based on cost, income forgone and anticipated benefits – but would be interested in hearing from NRCS on how the activity could be more accurately and appropriately accommodated within the CMT if that is the agency's preferred approach.

#### **L. Organic Crosswalk**

**NSAC endorses the comments of the Organic Farming Research Foundation with respect to the organic crosswalk and encourages their full adoption by NRCS.**

**In addition, we recommend a new paragraph (4) be added to 1470.2(c) to stipulate that NRCS will develop and make available the organic crosswalk.**

#### **M. Conservation Planning**

**NSAC recommends revisions to the IFR to bring it into accord with statute concerning conservation planning, including the addition of conservation planning in the conservation activities definition, the contract definition, and the payments section.**

The farm bill specifically includes conservation planning as part of the term conservation activities: "The term 'conservation activities' includes— (i) structural measures, vegetative measures, and land management measures, including agriculture drainage management systems, as determined by the

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<sup>21</sup> House Conference Report No. 110-627, Food, Conservation, and Energy Act of 2008 (110<sup>th</sup> Congr., 2d Session) at p. 721.

Secretary; and (ii) ***planning needed to address a resource concern.***<sup>22</sup> Providing further emphasis, the Managers Statement includes an entire paragraph on the subject:

*The Conference substitute includes planning needed to address a resource concern as a conservation activity. Since CSP is intended to address multiple resource concerns in a coordinated manner, the Managers encourage the Secretary to implement the program in a manner that encourages comprehensive conservation planning through technical and financial assistance under this program. The Managers encourage the Secretary to use site-specific conservation planning as outlined in the National Planning Procedures Handbook and implement the program in a manner that encourages comprehensive conservation planning on all applicable resources through technical and financial assistance under the program*

As the Managers statement makes clear, conservation planning is to be incorporated throughout CSP, including technical and financial assistance. Given the clear language of the statute and the report, we are perplexed by the lack of attention in the IFR. We believe a thorough rewrite is needed and offer these recommendations to help get that process started.

First, the definition of conservation activity in 1470.3 should be amended to include conservation planning as required by the statute. We suggest the addition of “conservation planning and” following the word “includes.”

Second, the definition of contract should be modified to insert the word “planning” immediately before the word “installing.”

Third, the word “planning” should also be added immediately before the word “installing” in 1470.24(a) in the main stem of the payments section.

These three changes are necessary but probably not sufficient to completely backfill the rule to reflect congressional intent, but they are at least three key points at which change is needed. We encourage the agency to review the rule in its entirety to insert conservation planning in other places where it is needed.

Operationally, we urge NRCS to immediately review its CSP technical and financial assistance procedures and mechanisms and take urgent steps to include conservation planning assistance in the 2010 sign-up and thereafter.

We also concur with the comments submitted by the Diversity Initiative that NRCS should provide some specific procedures and increased capacity (including TSP resources) to ensure that traditionally underserved producers have full access to assistance in comprehensive whole farm planning, as this is one of the greatest needs for socially disadvantaged populations.

## **N. Conservation Activities and Enhancement Definitions**

**NSAC recommends a change to the conservation activities definition to include enhancements and a change to enhancement definition to incorporate environmental**

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<sup>22</sup> Food Security Act of 1985, § 1238D(1), to be codified at 16 U.S.C. § 3838d (emphasis added).



**quality and to explicitly include the management and maintenance of existing enhancements and the adoption of new enhancements.**

The word “enhancement” does not appear anywhere in the statute, and yet the agency has chosen to make it a key part of the program rule and implementation. We will not debate the merits of that decision here, but simply note that extra care should be taken in the grafting of the new terminology with the statutory terminology.

The definition of enhancement in the IFR says it is a type of conservation activity, but the definition of conservation activity does not mention enhancements. We suggest this oversight be remedied with the addition of the word “enhancements” after “practices” and before “or management measures.”

The definition of conservation activities uses the phrase “address a resource concern or improve environmental quality through the treatment of natural resources” whereas the enhancement definition says “treat natural resource and improve conservation performance.” We recommend that the language in the conservation activity definition be used consistently and in both places.

Finally and most importantly, we recommend the addition of a new sentence at the end of the enhancement definition that would say: “Enhancements can refer to both newly adopted activities and to existing activities that are being actively managed and maintained to meet or exceed the level of management intensity at which they were installed.”

This is a critical addition and clarification to the enhancement concept. It needs to be in the final rule and it also needs to be reflected programmatically in the baseline assessment portion of the CMT as quickly as possible.

**O. Enhancements and Conservation Practices (1470.7)**

**NSAC recommends that 1470.7 be rewritten and re-titled to include both new enhancements and conservation practices to be implemented under a contract as well as existing enhancements and conservation practices to be actively managed and maintained under a contract.**

Section 1470.7 is another instance in which the conversion of the IFR from a new enhancements only approach to the more comprehensive approach signaled by the new farm bill failed to be fully reflected. Both (a) and (b) should be modified to incorporate baseline conservation activities.

We suggest reversing the order of (a) and (b), leading with the statement that NRCS will make available the complete list of baseline and new conservation activities available, including enhancements and conservation practices, prior to the start of each fiscal year. Then the new (b) should indicate that participant will then describe the existing conservation activities they are engaged in and the new conservation activities they will implement, with both parts then being recorded in the conservation stewardship plan. Finally, the section should be appropriately re-titled, perhaps as “Conservation Activity Lists and Selections” or something along those lines.

## **P. Payment Timing vs. Implementation Requirement**

**NSAC recommends a revision to 1470.24(1)(1)(i) to change the first year mandate to adopt at least one enhancement to a second year mandate.**

CSP payments are made in October (the start of the new fiscal year) following the contract year. Given that payment schedule it does not make sense to mandate the adoption of at least one enhancement in the first year of the contract. Such a mandate requires the farmer to pay the full cost of the enhancement well before the first payment. While there will certainly be some farmers and some enhancements where this is possible, and it should be encouraged, it is blatantly unfair to make this a universal mandate. The impact on limited resource, beginning, and socially disadvantaged farmers and ranchers will be particularly severe, but the effect will be more wide ranging than that as well.

We strongly urge you to change the mandate from the first contract year to the second contract year. We do not oppose allowing and encouraging farmers to adopt new enhancements as soon as possible, but we believe it is unfair and unrealistic to make it a mandate. If NRCS is unwilling to be fair and reasonable on this point, then we believe it must at least provide for a new payment provision allowing for an advance of the first year's payment in an amount at least equal to the cost of adopting the required enhancement.

### III. RECOMMENDED TECHNICAL CORRECTIONS

NSAC urges the adoption of the following changes to the IFR which are of a more minor and technical nature.

#### ***Section 1470.2 Administration.***

In (c)(1) – insert “each year” immediately prior to “to determine enrollments”

In (d) – insert after “\$18 per acre” the following words directly from the statute: “during the period beginning on October 1, 2008, and ending on September 30, 2017”

#### ***Section 1470.3 Definitions.***

Agricultural land – insert “, including energy,” after “agricultural products”

Management Measure – insert “or conservation system” after “conservation practice”

Operation and Maintenance – change to “Management and Maintenance” to accurately reflect the statute

#### ***Section 1470.20 Application for contracts and selecting offers from applicants.***

In (b)(2) – add “(in addition to the resource concern described in (b)(1))” after “priority resource concern”

#### ***Section 1470.22 Conservation stewardship plan.***

In (b) – add “maintained” after “managed”

#### ***Section 1470.23 Conservation activity operation and maintenance.***

In the title, change “operation” to “management” to accurately reflect the statute

In the first sentence, change “operate” to “manage”

#### ***Section 1470.24 Payments.***

In (a)(4)(i) – add “and practices” after “enhancements” both times and add “practice” after “enhancement”

In (b) and (b)(2) add “or improve” after “adopt”