



January 20, 2015

Regulatory and Agency Policy Team – Strategic Planning and Accountability  
USDA Natural Resources Conservation Service  
5601 Sunnyside Avenue, Building 1-1112D  
Beltsville, MD 20705

**RE: Conservation Stewardship Program Interim Rule with Request for Comment**

**Docket No. NRCS-2014-0008; RIN 0578-AA63; Submitted online via regulations.gov**

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to provide comments on the Conservation Stewardship Program Interim Final Rule (IFR). NSAC engaged extensively in the program's original development, initial authorization, and two subsequent reauthorizations, and has followed its implementation closely ever since. Leading up to the multi-year process that became the 2014 Farm Bill, and based on feedback from our member organizations and their farmer networks regarding program delivery, NSAC supported a number of statutory changes to CSP to enhance program administration and overall conservation benefits.

Additionally, NSAC and ten of our member organizations were the recipients of a Conservation Innovation Grant (CIG) – *Integrating Sustainable and Organic Agriculture into NRCS Programs* – to provide advice and assistance to NRCS on how to serve sustainable and certified organic farmers more effectively through technical assistance and working lands conservation programs. Many of our recommendations were specific to CSP. Particularly relevant to this IFR, we provided recommendations related to balancing the emphasis on existing and new conservation activities; stewardship threshold validation; the Conservation Measurement Tool; environmental benefits score transparency; comprehensive conservation planning; enhancement modifications; reevaluating CPPE point values assigned to certain conservation enhancements; establishing a minimum cumulative CPPE point threshold to be eligible for the program; and creating a new soil health bundle. Our CIG project recommendations are attached as an appendix and incorporated throughout this comment letter.

We submit the following recommendations and comments on behalf of our represented member organizations,<sup>1</sup> a significant number of which work directly with farmers and NRCS field staff to

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<sup>1</sup> Agriculture and Land Based Training Association, Alternative Energy Resources Organization, California Certified Organic Farmers, California FarmLink, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Catholic Rural Life, Center for Rural Affairs, Clagett Farm/Chesapeake Bay Foundation, Community Alliance with Family Farmers, Dakota Rural Action, Delta Land and Community, Ecological Farming Association, Farmer-Veteran Coalition, Fay-Penn Economic Development Council, Flats Mentor Farm, Florida Organic Growers, Grassworks, Hmong National Development, Illinois Stewardship Alliance, Institute for Agriculture and Trade Policy, Iowa Natural Heritage Foundation, Izaak Walton League of America, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Integrated Farm and Food Systems, Michigan Organic Food and Farm Alliance, Midwest Organic and Sustainable Education Service, National Center for Appropriate Technology, Nebraska Sustainable Agriculture Society, Northeast Organic Dairy Producers Alliance, Northern Plains Sustainable Agriculture Society, Northwest Center for Alternatives to Pesticides, Ohio Ecological Food and Farm Association, Organic Farming Research Foundation, Rural Advancement Foundation International – USA, Union of Concerned Scientists Food and Environment Program, Virginia Association for Biological Farming, Wild Farm Alliance.

promote CSP at the state and county level. We look forward to working with the agency to ensure that CSP continues to protect and enhance on our nation's land, water, and wildlife; is accessible to farmers of all types; and ensures taxpayer dollars are invested wisely in America's agricultural legacy.

## **I. INTRODUCTION**

The Conservation Stewardship Program (CSP) provides a unique opportunity for farmers and ranchers to maintain and improve previous successful conservation measures, to expand these measures onto additional acreage, and to integrate new conservation activities into their conservation systems, thereby achieving higher levels of resource stewardship while maintaining a viable financial bottom line. Properly administered and promoted, CSP has the potential to produce real, measurable conservation and environmental benefits, and has the capacity to reach all types of agriculture by encouraging strong conservation practices on crop, pasture, range, and forested land. In particular, CSP has the potential to serve sustainable and organic operations, specialty crop farms, grazing operations of all kinds, and diversified crop-livestock farms by offering a rich array of conservation activities (practices and enhancements) suited to each of these systems. However, more can, and must, be done to fulfill this program's potential.

The passage of the 2014 Farm Bill not only required NRCS to make certain programmatic changes to CSP, but also provided NRCS with an opportunity to engage the public in a transparent process for providing recommendations to improve the program's accessibility, administration, and effectiveness. It is our fervent hope that NRCS considers the comments submitted and adjusts the program accordingly.

Our comments address key programmatic changes the agency has made that are reflected in the IFR; statutory changes required by the 2014 Farm Bill; further opportunities to implement programmatic improvements through agency discretion; and other recommendations to ensure effective and efficient program administration.

## **II. RECOMMENDATIONS ON KEY PROGRAMMATIC CHANGES**

### **A. Balancing Retention and Additionality**

The most significant concern we have with the way CSP is administered is the excessive overvaluation of additional conservation activity compared to the retention and active management of ongoing conservation activity. The IFR preamble makes this bias explicit:

“Weighting of ranking factors was modified to clarify the authority of the Chief to adjust these factors as required to address any program objective, including placing emphasis on increasing net conservation benefits. . . . For the 2014 Act, the Chief will be applying weights to the ranking factors to address evolving resource issues and priority adjustments. . . . NRCS will maintain weightings of ranking factors that continue to emphasize greatly the extent to which additional activities will be adopted. For example, the NRCS Chief may decide to place increased weights to those factors that relate to additional activities in order to increase the net new conservation benefits.”<sup>2</sup>

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<sup>2</sup> 79 Fed. Reg. 65836, 65842 (Nov. 5, 2014).

As we have communicated since CSP's inception, we maintain that the ranking criteria should not favor newly adopted conservation activities over active management of existing conservation activities. CSP is intended to maximize conservation outcomes by selecting those applicants whose conservation strategies offer the highest overall conservation and environmental benefit. Applications with the highest environmental benefit scores should rank highest, without a preference or weighting for when the initial activity occurs. The sole criterion should be that all conservation is actively managed and maintained, with a commitment to continual improvement. We raised this point recently in our recommendations to the agency as part of our CIG Project recommendations.<sup>3</sup> It is unfathomable and incredibly disappointing that, to date, President Obama's Administration, OMB, USDA, and NRCS refuse to acknowledge the value of actively maintaining and improving advanced conservation land management activities and conservation farming systems.

We greatly value the importance of additionality within CSP. The purpose of CSP is to address the priority resource concerns of a particular state or watershed by encouraging producers to actively manage and improve their ongoing conservation activities *and* to add new conservation enhancements. However, the consistent and very dramatic overemphasis on the importance of additional conservation activities, and corresponding failure to adequately recognize and support ongoing activities farmers are undertaking, not only fails to satisfy the goals of the program, but is inconsistent with the statute.

The Farm Bill provisions for the CSP conservation stewardship plan and conservation stewardship payments include both conservation measures and systems in place at the time USDA accepts the contract *and* conservation measures and systems adopted subsequent to USDA's acceptance of the contract.

The statutory purpose of CSP is "to encourage producers to address priority resource concerns and improve and conserve the quality and condition of natural resources in a comprehensive manner -

(1) by undertaking additional conservation activities; *and*

(2) *by improving, maintaining and managing existing conservation activities.*"<sup>4</sup>

Active management and maintenance of existing activities must be sufficient to address at least two priority resource concerns to the stewardship threshold level or higher, and the conservation stewardship plan must "meet or exceed the stewardship threshold for at least one 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 across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract offer is accepted by the Secretary.*"<sup>5</sup>

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<sup>3</sup> See Appendix, CIG Project Summary Report, 37–40 (October 31, 2014).

<sup>4</sup> Agricultural Act of 2014, P.L. 113-79, Sec. 2101 (to be codified at 16 U.S.C. 3838E(a)) (hereinafter "2014 Farm Bill").

<sup>5</sup> 2014 Farm Bill § 2101 (to be codified at 16 U.S.C. 3838f(a)) (emphasis added).

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;
- (C) *the number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract;*
- (D) *the extent to which other priority resource concerns will be addressed to meet or exceed the stewardship threshold by the end of the contract period...”*<sup>6</sup>

Thus, one of the four major ranking criteria relates to the active management and maintenance of ongoing conservation (A), and two others (C) and (D) pertains to both existing and newly adopted conservation activities.

Finally, 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 agricultural operation of the producer at the time the contract offer is accepted by the Secretary.”*<sup>7</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 in equal measure. There is good reason for that program design choice. 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 for the future adoption of the same measures, provided the farmer adopt one or more new conservation enhancements and meets the other program requirements.

This comprehensive approach to conservation assistance is a critical element for CSP to achieve the ultimate goal of resolving specific resource concerns relevant to farming at 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. CSP does not provide an open-ended payment to all existing conservation measures. Rather, 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. This provides a realistic, common-sense approach to conservation assistance that enables a farmer to integrate conservation assistance across the entire farming operation.

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<sup>6</sup> *Id.* (to be codified at 16 U.S.C. 3838f(b)(1)) (emphasis added).

<sup>7</sup> *Id.* (to be codified at 16 U.S.C. 3838g(e)(1)) (emphasis added).

Nowhere does the 2014 Farm Bill (nor the 2008 Farm Bill, which first authorized the current Conservation Stewardship Program) state that one ranking factor or payment factor is more important than the other and therefore should be weighted higher than others.<sup>8</sup> In fact, in every instance, the statute stresses both factors equally. Nevertheless, the IFR and the program implementation apparatus include an unjustified bias in the weighting of existing and ongoing versus newly adopted conservation measures, both in ranking applications and in determining per-acre payment rates.

CSP was not intended to be a traditional cost-share program. CSP is a systems-based, outcome-oriented program, but the excessive valuation of additional conservation corrupts its purpose. At best, it forces the best stewards to accept lower payments than others. At worst it keeps some of the best conservationists from accessing the program at all, while rewarding only the late adopters of sound conservation systems. The program should reward environmental benefits and outcomes of both existing and new conservation activities equally, thereby recognizing the costs to the farmer and benefits to society of both ongoing and newly adopted conservation measures.

## 1. Ranking

The current 5-40-30-25 ratio for the four primary ranking factors (factors A through D) must be restructured. A five percent weighting for the active management, maintenance and improvement of ongoing conservation activity is not in keeping with the balanced nature of the statutory purpose of the program.

***General Recommendation:*** Exclusive of the cost/tie-breaker and CRP ranking factors (factors E and F), we recommend that no single factor receive less than a 20 percent weight.

***Specific IFR Recommendation:*** We urge you to add a provision to the codified stipulating the 20 percent minimum for each of the four primary ranking factors.

Specifically, modify section 1470.20(d) to read:

*Weighting of ranking factors.* The weight given to each ranking factor may be adjusted to achieve program objectives, as determined by the Chief, provided that that no individual factor in (i)–(iv) above shall receive less than 20 percent weight.

***Specific Implementation Recommendation:*** We urge you to make the requisite changes to the weighting factors listed in the CMT Conservation Performance Scoring document to reflect this 20 percent per factor minimum.

## 2. Payments

The 2014 Farm Bill added additional factors for the agency to consider in calculating payments.<sup>9</sup> However, the top three factors that NRCS is directed to consider when calculating payments – that were established by the 2008 Farm Bill and persist in the 2014 Farm Bill – are costs incurred, income foregone, and expected conservation benefits.

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<sup>8</sup> See *id.* (to be codified at 16 U.S.C. 3838f(b)).

<sup>9</sup> *Id.* (to be codified at 16 U.S.C. 3838g(d)(2)(D)-(G)).

We recognize that there are legitimate differences in the cost of adopting a new practice compared to the cost of maintaining an ongoing practice. Therefore, some payment differential is acceptable. However, there is no difference in environmental benefit between adopting a new practice and maintaining an ongoing practice. In fact, if anything, the environmental payoff of many conservation practices and enhancements may become greater the longer they are maintained, particular after the first few years.

Take, for example, the gradual improvement of soil quality and associated ecosystem services (e.g. carbon sequestration and nutrient retention) from long-term continuation of enhanced cover cropping practices or resource-conserving crop rotations. Or in the case of a properly maintained hedgerow, windbreak, riparian buffer, or other perennial conservation planting, as such plantings mature, the benefits to wildlife habitat, water protection, and other benefits increase. By failing to give due recognition and remuneration for ongoing maintenance of existing conservation activities, the IFR as currently written will likely make it harder for farmers to continue these practices in the long run, and much of the potential benefit of the program will be lost.

Regarding forgone income, there is also no major difference between active management and new adoption. If a farmer adopts a four-year instead of a two-year rotation, and as a result there is a corn crop one fewer year, then foregone income is a significant factor. But that factor is just as significant in year five and year ten as it was in the first year.

Any differential in the payment rate should only be for actual differences in cost. Such differences will vary widely. For example, the costs of installing wildlife friendly fencing (ANM27) would be much greater than the costs associated with maintaining the fencing, whereas the costs of implementing high level integrated pest management (WQL29) would not differ very much from the initial year to subsequent years. These cost differentials can be determined for each conservation activity and summed and averaged if necessary, should the agency decide to continue to have a melded rate for each land use type. However, such average cost differentials (whether by conservation activity or land use), should account for *at most* a third of the total payment factors, to give the appropriate weight to the environmental benefits and foregone income factors.

The new payment factors the 2014 Farm Bill added to the primary three factors are:

“(D) the extent to which priority resource concerns will be addressed through the installation and adoption of conservation activities on the agricultural operation;

(E) the level of stewardship in place at the time of application and maintained over the term of the contract;

(F) the degree to which the conservation activities will be integrated across the entire agricultural operation for all applicable priority resource concerns over the course of the contract.”

Factor (D) has to do with new conservation, Factor (E) has to do with existing conservation, and Factor (F) relates to the whole farm, without regard to the timing of a particular practice. These new payment factors are a reiteration of the purposes section of the statute, and serve to reinforce the

legislative intent that there be no skewing or weighting of payment factors to favoring additionally. Here, as elsewhere, the statute provides a balanced approach to the issue.

***General Recommendation:*** Payments should be focused on environmental outcomes, costs, and income foregone to the producer. CSP is intended to maximize conservation outcomes by selecting those applicants with the highest overall conservation and environmental benefit, and thus should focus on adaptive management and continual improvement, not on the timing of initial adoption.

Therefore, we believe that the extreme payment discounts for conservation retention must be thoroughly re-evaluated and adjusted upward. Currently, the program pays less than *one-tenth* as much per environmental benefit point for active management of ongoing conservation activities as for the adoption of new practices on cropland (8.6%), forestland (9.3%), and rangeland (6.8%). Pasture (13.6%) and pastured cropland (21.4%) fare only somewhat better. There is no statutory or economic justification for these extreme differentials. They are destroying the program and must be brought back into alignment with the program's purpose.

The huge and unjustified payment differential is no less important for contract renewals as it is for new contracts. NRCS notes the changes to the renewal process in the 2014 Farm Bill "will likely result in a slightly larger portion of CSP participants not renewing their contracts compared to comparable sized 2008 CSP and renewal rate"<sup>10</sup> because CSP participants would likely have to increase the number of additional activities applied during the second five-year period. However, NRCS expects this to result in a "small improvement in cost-effectiveness."<sup>11</sup> We believe that the lack of support for maintenance of ongoing conservation will deter a *substantial* number of CSP participants from renewing their CSP contracts, and therefore assert that the loss of conservation benefits from farmers leaving the program would seriously *reduce* program cost effectiveness.

We have heard from many of our member organizations that their farmers are choosing not to renew their contracts because the payment differential is so great. Many of these farmers were the cream of the crop when they first enrolled, and now the extreme overemphasis on additional practices has significantly reduced their contract payments. Again, it is understandable that there should be some decrease in the payment for actively managing and maintaining a practice or enhancement rather than adopting it in the first place. But, the environmental benefits gained from ongoing conservation (and the high-impact, advanced conservation these folks would likely add) are lost if they do not find it worthwhile to renew.

Inadvisably, the IFR now includes language that explicitly places an emphasis on implementing additional conservation. We strongly urge the agency to revise this approach to avoid the unintended result this action – namely, the loss of conservation gains across the landscape.

***Specific IFR Recommendation:*** NRCS should level the playing field so that CSP truly rewards environmental benefits and outcomes by equalizing the treatment of actively managing and improving ongoing conservation activities and adopting new conservation enhancements throughout both the CSP ranking and CSP payment structure. Differences in ranking and payments should reflect nothing other than actual or expected differences in environmental benefits, financial costs, and forgone income to the farmer.

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<sup>10</sup> 79 Fed. Reg. at 65839.

<sup>11</sup> *Id.*

We recommend specific revisions to two sections of the codified:

First, in section 1470.1 on Applicability, add a new (e) as follows:

“(e) Financial assistance shall be provided for (b)(1) and (b)(2) activities in an equitable manner, without any differential weighting factors and with payment level distinctions between (b)(1) and (b)(2) activities based solely on actual or expected differences in:

(1) the cost incurred by a participant associated with planning, design, materials, installation, management, maintenance, or training; and

(2) income forgone by the participant.

Second, modify section 1470.24 on Payments as follows:

(a) Annual Payments. Subject to the availability of funds, NRCS will provide, as appropriate, annual payments under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities across the entire agriculture operations in a manner that increase or extends the conservation benefits in place at the time the contract offer is accepted NRCS. A split-rate annual payment structure is used to provide separate payments for additional and existing conservation activities in order to ~~place emphasis on implementing additional conservation~~ reflect actual or expected differences between existing and new activities in the cost incurred by a participant associated with planning, design, materials, installation, management, maintenance, or training, and income forgone by the participant.

***Specific Implementation Recommendation:*** In keeping with the IFR change, the current “Payment for Performance” document on the NRCS CSP website should be thoroughly revised to correct the extreme discount rate currently applied to the active management and maintenance of ongoing conservation activities. The current differentials – rangeland (6.8%), cropland (8.6%), forestland (9.3%), pasture (13.6%), and pastured cropland (21.4%) – should be dropped and new differentials should be calculated that reflect actual or expected differences between existing and new activities in the cost incurred by a participant associated with planning, design, materials, installation, management, maintenance, or training, and income forgone by the participant. This could be accomplished either on an activity-by-activity basis, for greater accuracy, or on the current averaged land use basis, should the agency choose to continue that simplified but far less accurate approach.

## **B. Ensuring Robust and Meaningful Stewardship Thresholds**

The Farm Bill directs the agency to “establish a science-based stewardship threshold for each priority resource concern” identified in a particular state watershed or region.<sup>12</sup> We support the Farm Bill requirement that stewardship thresholds be firmly rooted in science.

The Farm Bill defines “stewardship threshold” as the level of management required, as determined by the Secretary, to conserve and improve the quality and condition of a natural resource.<sup>13</sup> The

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<sup>12</sup> 2014 Farm Bill, § 2101 (to be codified at 16 U.S.C. 3838g(a)(3)).

<sup>13</sup> *Id.* (to be codified at 16 U.S.C. 3838d(7)).



preamble to the IFR explains that, “NRCS guides its efforts to set stewardship thresholds at sustainable levels for natural resource treatment.”<sup>14</sup> However, this language is not in the rule itself. Having a standard of stewardship in place is incredibly important to ensure a science-based standard for the program. That is, not only must the stewardship thresholds be rooted in science, but they must also be raised to a sustainable use (i.e., the non-degradation, or resource management system) level and not simply reflect a generic “conserve and improve” design that lacks any rigor.

The resource concern thresholds themselves have not been validated. Thresholds were set beginning in 2008 for each of the resource concerns, using what is generally acknowledged as an imperfect process. The threshold scores were developed based on a very limited number on agricultural operations that the local NRCS staff considered to be practicing a moderate level of conservation. In other words, a relatively modest bar was set to determine eligibility for the program.

The importance of thresholds to CSP cannot be overstated. Under the 2014 Farm Bill, in order to even apply for CSP, new applicants must meet a stewardship threshold for two priority resource concerns and must meet or exceed the threshold for a third resource concern by the end of the contract. Thresholds also are used in a majority of the six factors of the ranking formula for enrollment, and are one of the six statutory factors provided for figuring payment amounts. Given how much CSP relies on meeting resource concern thresholds for administering the program, it would be advantageous to have greater scientific underpinning or validation of whether the thresholds are defensible.

***IFR Recommendation:*** Clarify and enhance the definition of “stewardship threshold” by incorporating language from the preamble into the rule itself, ensuring that the stewardship thresholds used in CSP will be set at the sustainable use (or non-degradation) levels. This will ensure that CSP has high standards to encourage more conservation and recognize the best stewards of the land.

Specifically, we recommend the following changes to the definition in section 1470.3:

*Stewardship threshold* means the level of management required, as determined by NRCS, to conserve and improve the quality and condition of natural resource such that it satisfies sustainable use (non-degradation) levels.

***Implementation Recommendation:*** Stewardship thresholds should be revised upward, setting a higher bar for eligibility and initial application screening. This is a fair and sure-fire way to increase the program’s environmental outcomes. A higher stewardship bar would increase environmental outcomes in a more meaningful and reasonable manner than artificial and unfair weighting of advanced conservation activities based solely on the initial timing of adoption. The agency’s current approach couples a low stewardship bar with unequal treatment of conservation activities. A high stewardship bar and equal treatment across new and existing conservation would maximize environmental outcomes and be consistent with the fundamental intent of CSP.

***Implementation Recommendation:*** NRCS should develop a science-based, defensible approach to ensure threshold numbers are a valid measure of good conservation for each resource concern. The

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<sup>14</sup> 79 Fed. Reg. at 65841.

NRCS quality criteria and the many years of CMT results will provide valuable guidance to determine appropriate threshold levels and inform development of such an analysis. NRCS may want to include the development of threshold validation in the next round Conservation Innovation Grants or enter into a Cooperative Agreement with a qualified University or research lab.

### **C. Managing Micro-Resource Targeting to Ensure Comprehensive Conservation**

The 2014 Farm Bill presages a shift from macro to micro-targeting of resources by eliminating reference to “resource concerns” and instead making distinctions based on “applicable” priority resource concerns and “other” priority resource concerns and by shifting the minimum priority resource concern number from three to five.<sup>15</sup>

In earlier recommendations, we expressed concerns that this new focus on micro-resources could result in a subversion of the intent that CSP provide a *comprehensive* approach to addressing natural resource concerns.<sup>16</sup> The 2014 Farm Bill provides that the purpose of CSP is to “encourage producers to address priority resource concerns *and improve and conserve the quality and condition of natural resources in a comprehensive manner.*”<sup>17</sup> This new language indicates that the transition to more fully integrating micro-resource concerns into the program should be achieved in a manner consistent with the long-term objective of the program, which remains to address all relevant resource concerns.

In general, we believe NRCS’ approach to this issue in the IFR addresses this concern. Of the current list of eight priority resource concerns, NRCS states in the IFR that it will identify not less than five applicable PRCs in a particular watershed, geographic area, or other appropriate region within a state.<sup>18</sup> Given the farm bill directive, we support this approach, which ensures that the program continues to take a comprehensive approach to addressing resource concerns as the agency moves toward micro-resource targeting.

We do recognize that this approach is likely to be temporary, and that the program will likely eventually switch to micro-resource targeting. In that way, the current approach dictated by the 2014 Farm Bill is not ideal, given that selecting five out of eight as priorities detracts from the notion of “priority.” This was our position during the Farm Bill debate as well. That is, to retain the existing requirement of at least three priority resources out of eight unless and until the agency shifts to micro-resources, which would more accurately convey the sense of priority.

By the same token, however, when the switch happens, caution must be taken that the new approach does not result in a subversion of the intent that CSP provide a comprehensive approach to addressing natural resource concerns, as the Farm Bill requires.<sup>19</sup>

***Implementation and IFR Recommendation:*** When selecting priority micro-resource concerns, we recommend that each State or region be required to pick micro-resource concerns from among no less than three macro-resource concerns. This intent to target micro-resource concerns in three or

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<sup>15</sup> 2014 Farm Bill § 2101 (to be codified at 16 U.S.C. 3838d(5)).

<sup>16</sup> *Id.* (to be codified at 16 U.S.C. 3838e(a)).

<sup>17</sup> *Id.* (to be codified at 16 U.S.C. 3838e(a)) (emphasis added).

<sup>18</sup> 79 Fed. Reg. at 65840.

<sup>19</sup> 2014 Farm Bill § 2101 (to be codified at 16 U.S.C. 3838e(a)).

more macro-resource concerns should be included in the final rule. In that way, the new rule and program guidelines can shift to micro-resource targeting while still maintaining a comprehensive approach to conservation.

Specifically, modify section 1470.1(e)(2) to read:

Identification of not less than five applicable priority resource concerns in a particular geographic area, or other appropriate regions within a State. In the case of micro-resource targeting, applicable priority resource concerns shall be selected from among not less than three macro-resource concerns.

## **D. Transitioning Conservation Reserve Program Acres**

### **1. Supporting the CRP-to-CSP transition through outreach and promotion**

The 2014 Farm Bill CRP-to-CSP transition provision, which allows CRP holders to enroll in CSP in the final year of their CRP contract, makes it easier for CRP landowners to obtain CSP contracts.<sup>20</sup> As part of the new option for CRP landowners to seamlessly transition to CSP, the Farm Bill Managers' Statement directs NRCS to do outreach to CRP landowners to facilitate the transition of expiring CRP acres into CSP.<sup>21</sup>

NSAC endorses this statement, and encourages NRCS to collaborate with the Farm Service Agency (FSA) to jump-start the outreach process to CRP landowners as soon as possible in order to bring CRP acres back into production in a way that protects the conservation value of those acres. We urge the agencies to work together to ensure that all landowners with retiring CRP acres are alerted at least a year ahead of their final CRP year, by letter, to the option to transition to CSP.

In addition, NRCS should be active in reaching out to CRP landowners and the beginning farmers they are working with as part of the CRP-Transition Incentive Program (CRP-TIP). In order to maximize conservation values under CRP-TIP, beginning and socially disadvantaged farmers that gain access to land via this program should be encouraged to keep the eligible land in conservation. These can be excellent ways for beginning farmers to get started or expand their operations while receiving support for advanced conservation.

CRP-TIP requires the new farmers or ranchers to develop and implement a conservation plan. For 2015 and all years following, NRCS should provide new farmers and ranchers in CRP-TIP the option to develop their comprehensive conservation plan using CSP technical and financial assistance, including payments to help offset the time and management costs of developing a comprehensive conservation plan. This will be a particularly good option for beginning farmers leasing or buying land through CRP-TIP, as it is already a requirement of CRP-TIP participation.

NRCS should work with FSA to contact all CRP landowners well in advance of the final year of their CRP contracts to alert them to CRP-TIP and the requirement in CRP-TIP that the new operators – beginning or socially disadvantaged farmers and ranchers – develop and carry out a

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<sup>20</sup> 2014 Farm Bill § 2006(c) (to be codified at 16 U.S.C. 3835(g)(1)).

<sup>21</sup> 2014 Farm Bill Managers' Statement at 983.

comprehensive conservation plan, and be offered the opportunity to enroll in CSP as they begin their new ventures.

***Implementation and IFR Recommendation:*** Collaborate with FSA to distribute letters to all landowners with expiring CRP contracts, at least a year in advance of the final year of the CRP contract, informing them of the opportunity to enroll in CSP in the final year of their CRP contract. Include mention of this new effort in the preamble to the final rule.

***Implementation Recommendation:*** Collaborate with FSA to contact CRP landowners to inform them about CRP-TIP and the CRP to CSP transition for CRP-TIP participants, and also ensure that beginning and socially disadvantaged farmers and ranchers participating in CRP-TIP are aware of the option to and benefits of enrolling in CSP, including the comprehensive conservation planning payment option.

## 2. CRP Ranking Factor and Enhancements

The 2014 Farm Bill required that land transitioning out of CRP be included among the program's ranking factors. NRCS is seeking specific comment on how the factor for CRP land should be weighted in proportion to other ranking factors.<sup>22</sup> NSAC supports doing everything possible to get CRP land that is now going back in production into CSP, but we did not support the inclusion of this particular provision in the Farm Bill. This is because we do not support the scenario whereby CRP-to-CSP proposals – that may otherwise have much lower conservation and environmental benefit relative to other proposals – nonetheless get into the program, and bump others out, solely because the landowner once held a CRP contract.

In the CMT Conservation Performance Scoring for 2014, land coming out from expiring CRP contracts received a very small advantage over non-CRP land. In light of the statutory requirements, we think that such a modest point value is sufficient. We also note, and discuss more extensively as part of our CIG Project recommendations, that the environmental benefits scores calculated for the CRP enhancements seem wildly out of proportion to equivalent enhancements for non-CRP lands.<sup>23</sup>

We understand that NRCS was trying to tweak CSP program details to capture the opportunity to entice expiring CRP farms to enroll and maximize conservation. We have actively supported this goal and continue to do so. We especially emphasize aggressive and early outreach from both NRCS and FSA, alerting expiring CRP owners to the option to transition to CSP.

***Implementation and IFR Recommendation:*** Continue to use a modest point value when applying the CRP ranking factor.

***Implementation Recommendation:*** A five percent point bonus on CRP enhancements seems more than adequate to boost CRP-to-CSP enhancement scores. Participants who choose those CRP-related enhancements with full knowledge of their point values (including a small five percent bonus for CRP enhancements) will very likely rank high enough to be enrolled. As it stands now, however, we are concerned that expiring CRP applications, because of inflated enhancement scores, will be more likely to rank high enough to be selected for contracts, and will receive higher payments than

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<sup>22</sup> 79 Fed. Reg. at 65842.

<sup>23</sup> See Appendix, CIG Project Summary Report at 45–47.

non-CRP farmers who may in fact be providing better conservation outcomes. This result is not only unfair, but also runs counter to the agency's goal of maximizing conservation outcomes. Therefore we urge NRCS to retract the extremely high scores for CRP-to-CSP enhancements and instead base those enhancements on straightforward environmental benefit scoring, just like all the other enhancements, with at most an added five percent bonus factor.

### **E. Supporting Resource-Conserving Crop Rotations**

Resource-Conserving Crop Rotations (RCCRs) are among the most effective systems for addressing resources concerns, and we are pleased that NRCS wasted no time implementing the 2014 Farm Bill language that authorizes supplemental payments for producers who adopt *or improve* such systems.<sup>24</sup> This takes an important step forward in recognizing those farmers leading the way in conservation by improving existing RCCRs.

However, providing an appropriate payment rate will be imperative to the successful adoption and maintenance of this practice. Under existing authority, “the supplemental payment is set at a rate *needed to encourage a producer to adopt a resource conserving crop rotation* and will be based, to the maximum extent practicable, *on costs incurred and income foregone by the participant and expected environmental benefits*, determined by estimated conservation performance improvement using the CMT.”<sup>25</sup>

We notice that the IFR has rephrased this language by eliminating the explicit direction that the RCCR supplemental payment be set at a rate *needed* to encourage adoption of RCCRs. The IFR still acknowledges that the supplemental payment exists to “encourage a producer to adopt or improve a resource-conserving crop rotation” based on the payment factors that primarily address costs incurred, income foregone, and expected conservation benefits.<sup>26</sup> Why this change was made is not clear, but we do not believe this textual modification alters the fact that the supplemental payment must be set at a rate sufficient to encourage producers to adopt and improve RCCRs.

NRCS took a significant step backwards by lowering supplemental payment rates from \$18 to \$12 per acre. Even the best stewards of the land must ensure that conservation activities remain financially feasible in order to be sustainable. In the face of continuously soaring cropland values and rental rates, not to mention USDA commodity programs that pay significantly more per acre to encourage environmentally-destructive monoculture, the agency's decision to reduce supplemental payment rates for RCCRs is inappropriate, as the newer rate fails to accurately reflect the value of RCCRs and the costs and forgone income incurred by farmers diversifying their rotations with the addition of resource-conserving crops.

The most recent NASS summary of land values shows a marked trend upward in cropland value nationwide. From 2012 – 2013, cropland value increased by 13 percent per acre (\$460) up to \$4,000 per acre.<sup>27</sup> Since 2009, average cropland value increased by nearly \$1,400.<sup>28</sup> Similarly, average rent paid per acre has increased nationwide. In 2013, the average national rental rate was \$136 per acre,

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<sup>24</sup> 79 Fed. Reg. at 65842 (Section 1470.24(b) “a participant is eligible for a supplemental payment if the participant agrees to adopt or improve beneficial crop rotations”).

<sup>25</sup> 7 CFR 1470.24(b)(3).

<sup>26</sup> 79 Fed. Reg. at 65849.

<sup>27</sup> USDA National Agricultural Statistics Service, Land Values 2013 Summary, 11 (August 2013).

<sup>28</sup> *Id.*

up 8.8 percent (\$11 per acre) since 2012.<sup>29</sup> In the last decade, the average national rent has nearly doubled, up from \$73 per acre in 2003.<sup>30</sup> Given the increasing trends in land value and rental rates, it is unclear how NRCS justified lowering the rate from \$18 to \$12 per acre during the 2008 Farm Bill cycle, rather than increasing the rate to reflect current trends. We understand NRCS may consider adjusting this rate, and we urge the agency to do so considering these trends.

***Implementation Recommendation:*** Re-examine the payment rate offered for RCCRs and adjust it to provide an appropriate supplemental payment rate for farmers implementing or improving RCCRs. The current \$12 per acre rate is inadequate given that increasing land values, rental values, and costs of inputs continue to place upward price pressures on farm owners and operators. To accurately reflect the economic realities faced by producers and the conservation and environmental benefits RCCRs provide, we recommend that the supplemental payment be increased to \$20 per acre.

## **F. Improving the Conservation Measurement Tool**

As directed by the 2014 Farm Bill, the IFR eliminates reference to the Conservation Measurement Tool (CMT). NRCS notes “the removal of the statutory and regulatory reference does not prohibit NRCS from utilizing the CMT or equivalent methodology, but simply removes the requirement that it be used.”<sup>31</sup> We agree. NRCS should continue to use the CMT until such time as a superior method is developed and field-tested, a process that should include extensive stakeholder input.

The most successful programs require adaptive capacity to integrate evolving science and technology. CSP is no different. Following this logic, the nominal removal of CMT from the rule may make sense, as it gives NRCS more freedom to incorporate newer, more effective conservation assessment tools and models in the future. However, we also believe the CMT is a valuable resource and can be improved a great deal in the meantime through greater transparency and accessibility.

The CMT is used to determine CSP eligibility, ranking, and payments. Yet, presently, farmers cannot use the tool as a learning device; cannot test different conservation scenarios; and can obtain only limited explanation of how the CMT and the choices therein impact one’s ranking score and payment points.

Providing producers with the ability to test out various conservation scenarios not only will improve applicants’ understanding of the program, but also should facilitate the ease with which NRCS field staff take producers through the CMT process. If producers are able to run scenarios, and are provided with information that clearly explains the various environmental benefits associated with various conservation activities, then producers can fully consider how to incorporate the most advanced conservation practices that are appropriate within the context of their farming operation.

As we noted in our CIG recommendations, the CMT now shows a running tally, which is certainly an improvement. However, more information is still needed to help farmers understand the relative conservation outcomes of the enhancements available for their operation.<sup>32</sup> We agree that

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<sup>29</sup> USDA National Agricultural Statistics Service, 2013 Land Values and Cash Rents – Cropland and Pasture, No. 2013-3, (October 2013).

<sup>30</sup> *Id.*

<sup>31</sup> 79 Fed. Reg. at 65842.

<sup>32</sup> See Appendix, CIG Project Summary Report at 32–34, 131.

enhancements and practices should be selected first and foremost because they are appropriate to the resource concerns being addressed and to the specific farm and its needs. Presumably, proper implementation of the Farm Bill language authorizing payments for comprehensive conservation planning would mean that each applicant is equipped with an understanding of which enhancements are most appropriate to his or her particular resource concern, location, and operation. We provide additional recommendations on comprehensive conservation planning below.

Nevertheless, we find it highly unlikely that increased knowledge about how the program functions through transparent and available information on the environmental benefits of various enhancements would somehow lead an applicant to attempt to “game the system” by selecting enhancements that are high-scoring but otherwise inappropriate to their operation.

As we note in our CIG Recommendations<sup>33</sup> and have repeatedly discussed with the agency, we are confident that most farmers enter CSP because they are proud of their conservation efforts and want to achieve higher levels of conservation performance. Provided there is sufficient financial support, most will go through the effort of adopting a new practice if they understand what the relative benefits to the resource and the environment would be. Not providing this information can hinder the very purpose of CSP, which is to encourage good conservation farmers to become great conservation farmers.

Farmers need to understand that the relative environmental benefits of the enhancements will in large part determine how they rank among eligible CSP applicants. Motivated farmers will want to do more when they know that doing more and earning a higher score, as long as it fits their operation and capacities to adopt, will improve their chances of being selected for a contract.

Our CIG project revealed that this is a particular problem for the best conservation farmers – they start out already having achieved a relatively high level of conservation performance and may have less obvious choices of what else to do. These high-performing farmers may have to stretch a little to find enhancements that take them to the next level. Transparency on the environmental benefits of enhancements would help these farmers figure out how to rank well enough to be selected for CSP or to undertake a renewal of their current contracts.

Conversely, our CIG analysis also found some applicants inadvertently picked low scoring enhancements, or were guided by NRCS staff to relatively easy enhancements, not understanding the significance of their enhancement choices or the opportunity to improve resources. Some may have ended up shooting themselves in the foot by not ranking high enough to be selected.

Finally, points for enhancements are a significant part of the payment formula for CSP contracts, and knowing the points would help farmers improve contract funding. Farmers should be able to easily weigh the financial support provided for going the extra mile in undertaking a higher level of conservation performance against the cost of undertaking such efforts. Of course, farmers must also take into account what level of conservation adoption best fits their operation and the farm site, and what they are able to manage in making their enhancement selections, but knowing the level of support for a given level of conservation effort is a critical factor as well.

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<sup>33</sup> *Id.*

The unlikely chance that a producer would choose an inappropriate enhancement merely for the points and payment is tempered by the fact that NRCS field staff are involved in the application process, and job sheets and contracts are enforceable.

Transparency on points and payments is especially critical for smaller acreage producers, including beginning, minority, and other underserved farmers, as well as specialty crop producers, for whom CSP payments may otherwise not be high enough to warrant participation. Greater transparency could assist NRCS in achieving its environmental justice objectives, and support more types of agricultural operations.

***Implementation Recommendation:*** We urge NRCS to augment the CMT so it provides a real-time accounting to applicants of their ranking score and conservation performance score as they conduct farm assessments, evaluate alternative scenarios for their conservation activities, and finalize contract applications. This can be accomplished most effectively by posting a farmer-accessible, online CMT for potential applicants to try out different scenarios and combinations of conservation activities.

***Implementation Recommendation:*** We also recommend NRCS improve the reports generated by the CMT to provide a clear explanation of which natural resources of concern have been well addressed and which ones are lacking. Additionally, it should be made clear to the applicant how much of his or her final ranking was dependent on current conservation effort and how much from the selection of undertaking new enhancement or practices.

***Implementation Recommendation:*** Finally, NRCS should work with producers to convey an understanding of the practices and enhancements that produce the greatest environmental benefits and relative scores. We recommend that NRCS post a ranked list showing all enhancements and practices on all NRCS websites and educational materials. NRCS field staff can then communicate these scores and appropriately apply them to producers in the context of their particular farm-level needs and requirements as part of the CMT process and the CSP contract development process.

### **III. RECOMMENDATIONS REGARDING STATUTORY CHANGES ABSENT FROM THE RULE**

#### **A. No-Year Money and Acreage Roll Over**

The 2014 Farm Bill includes an important and much-needed provision relating to conservation program funds. The Section 2601(a) provision on Annual Funding states, “the Secretary shall use the funds, facilities and authorities of the Commodity Credit Corporation to carry out the following programs under this title” which includes CSP. Section 2601(b) is a “no-year” money provision, which stipulates that “amounts made available in [Section 2601(a)] for fiscal years 2014 through 2018 shall be used by the Secretary to carry out the programs specified in [Section 2601(a)] *and shall remain available until expended.*”

This no-year provision makes it clear that funds used to carry out the programs listed in Section 2601(a) carry over from year-to-year if not expended for the duration of the 2014 Farm Bill. CSP falls among the conservation programs with funding parameters based not on an enumerated dollar limit, but on total acres enrolled in the program. The amount of funding allotted to the program is measured by the amount necessary to enroll the specified acres.



The 2014 Farm Bill directs the Secretary to enroll 10,000,000 additional acres in CSP for each fiscal year 2014 through 2018 “to the maximum extent practicable.” In doing so, the farm bill provides the authority and funding for a cumulative 50,000,000 additional acres to be enrolled in CSP over the life of the farm bill. The funds associated with any remaining un-enrolled acres, or acres that become un-enrolled for any reason, are therefore appropriately carried over into the next fiscal year. Clearly, if Congress had not intended for the no-year money provision to apply to CSP, it would not have explicitly listed CSP in Section 2601(a). Canons of statutory interpretation have long-established that Congress does not include statutory text as mere surplusage. If the language Congress uses is clear, then the agency must adhere to that language. Only where statutory language is ambiguous is the agency free to adopt a reasonable interpretation of the statute. In this case, Congress’s intent and the statutory text could not be clearer. To argue that the no-year money provision does not apply to CSP contradicts the letter and the spirit of the law.

Implementing this provision properly is critical, particularly when considering that in 2013, only 9.5 million acres were enrolled in CSP despite having the funding and authority to enroll 12.8 million acres annually under the 2008 Farm Bill. Although the low enrollment can be attributed to multiple causes, including the effects of sequestration and the late enrollment resulting from the appropriations process, nearly 2.5 million acres – and associated resources – were lost. The 2014 Farm Bill cut to the annual acreage cap from 12.8 to 10 million makes this all the more important.

***IFR Recommendation:*** Given the applicability of the no-year money provision to CSP, NRCS should clarify in the final rule that any acres – and associated funds – that may be unutilized in a given year will be available for enrollment in subsequent years. Any CSP acres that remain un-enrolled or become un-enrolled in a given fiscal year, and their associated funds, should carry over for enrollment in subsequent years.

## **B. Ensuring Fiscal Responsibility by Eliminating the Payment Limit Loophole**

The 2014 Farm Bill limits CSP contracts to \$40,000 per fiscal year and \$200,000 from fiscal year 2014 through 2018. However, the IFR continues to allow for the doubling of the statutory limit for joint operations.<sup>34</sup> This doubling is not authorized by the Farm Bill, and should be removed from the rule. The IFR also neglects to require that beneficiaries be active farmers, and allows farms to have multiple contracts despite the statutory stipulation that the entire farm must be enrolled in the CSP contract.

Combined, these loopholes allow some farms to amass very large contracts, far in excess of the statutory limit and contrary to the stated intent of the agency to “prevent large contracts of this nature” that result in “the potential for a high percentage of allocated acres and funds to be utilized in contracts with large joint operations to the detriment of smaller operations.”<sup>35</sup> In order to ensure that CSP has sufficient funding to support many prospective conservationists, these payment limit loopholes must be closed.

***IFR Recommendation:*** Close the loopholes that allow some farms to exceed the payment limits established by Congress, and include a requirement that beneficiaries be actively engaged in the farming operation. This will conserve financial resources and allow more farmers to participate in

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<sup>34</sup> 79 Fed. Reg. at 65850; Section 1470.24(g).

<sup>35</sup> 79 Fed. Reg. at 65843.

CSP. This is especially important in these times of congressionally imposed fiscal austerity for vital conservation programs.

Specifically, make the following changes to Section 1470.24:

(f) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$40,000 during any fiscal year for all CSP contracts entered into, and \$200,000 under all CSP contracts entered into during fiscal years 2014 through 2018, excluding funding arrangements with Indian tribes, regardless of the number of contracts entered into under the CSP by the person or legal entity. NRCS may waive the annual payment limitations in this section where NRCS determines that due to circumstances beyond the participant's control, payment for implementation for a fiscal year's activities cannot be made as scheduled under the CSP contract. The person or legal entity must be deemed actively engaged in the operation in order to receive payments, which means that they have capital at risk or risk commensurate with their contributions to the farm; their involvement in the management of the farm must be regular, substantial, and continuous; and they must contribute labor to the farming enterprise that is equal to at least half of their commensurate share of the operation.

(g) *Contract limits.* Each conservation stewardship contract will be limited to \$200,000 over the term of the initial contract period, ~~except that conservation stewardship contracts with joint operations will be limited to \$80,000 per fiscal year and \$400,000 over the term of the initial contract period.~~

**Implementation Recommendation:** While the IFR does not provide for more than a single contract for an agricultural operation, in practice we are informed that multiple contracts are provided for a variety of reasons. We urge a change in program implementation to conform to the statutory and regulatory requirement that the entire agricultural operation be enrolled in a single CSP contract.

### **C. Comprehensive Conservation Planning**

The 2014 Farm Bill retained the existing definition of “conservation activity” as including “planning needed to address a priority resource concern.”<sup>36</sup> Moreover, the Managers’ Statement included important language that clarifies that planning “has an inclusive plain language meaning to encompass, for example, conservation planning. The Managers recognize that in developing a conservation plan, a producer incurs significant costs in time, labor, management, and foregone income.”<sup>37</sup> This important clarification authorizes NRCS to provide financial and technical assistance for producers who want to undertake comprehensive conservation planning as part of their overall CSP contract.

In conversation with NRCS, we understood that the agency planned to move ahead with providing financial and technical assistance for comprehensive conservation planning as a contract line item in

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<sup>36</sup> 2014 Farm Bill, § 2101 (to be codified at 16 U.S.C. 2828d(1)(B)(ii)).

<sup>37</sup> Managers’ Statement at 983.

time for the FY15 sign-up. We strongly supported this decision, and provided additional recommendations on as part of our CIG Project.<sup>38</sup>

We were distressed to learn that this option now may not be implemented. Given Congress's clear instruction to provide payments for these types of activities, and the incredibly important role they can play in helping a farmer select the best and most appropriate enhancements for their operation, thereby enhancing the conservation cost-effectiveness of individual contracts and CSP as a whole, we strongly urge the agency to resume implementation of this option.

***IFR Recommendation:*** Include a specific reference to the comprehensive conservation planning payment option in the payment section of the final rule.

***Implementation Recommendation:*** Complete the supplemental payment option for comprehensive conservation planning in time for the FY 15 sign up, as originally planned. We consider this option a high priority optimizing CSP's efficacy.

In our CIG project recommendations, we suggested that one option for the comprehensive conservation plan be modeled after the EQIP Conservation Activity Plans (CAPs).<sup>39</sup> EQIP CAPs allow producers to get quality plans done through technical service providers. This option should be made available for CSP, though it should not be the only option available.

We also recommended a sliding scale payment rate for the contract payment, with a minimum payment of \$1,000 and a maximum of \$3,000. As a comprehensive plan, it would cover at least all of the priority resource concerns for a given region, and could also cover any additional site-specific resource concerns or resource objectives of the producer. The number of resource concerns addressed in the comprehensive plan would be one factor determining the payment rate, in addition to the complexity of the farming operation, including the number of crop and livestock species and the number of farming operations. This means a more complex, smaller-acreage operation may warrant a higher payment than a simple, large-acreage operation.

#### **IV. RECOMMENDATIONS FOR PROGRAMMATIC IMPROVEMENTS USING AGENCY DISCRETION**

##### **A. Increasing Access for Beginning Farmers**

Our agricultural system includes a wide range of farmers and farming operations. To truly encourage conservation across the agricultural landscape, CSP must be accessible to farmers of any experience level and farms of any scale, production system, and enterprise mix. The average age of the American farmer continues to climb, reaching 58.3 years old in the most recent Census of Agriculture. The next generation of American producers will need ample resources to establish themselves as good stewards of the land and effective conservationists. In supporting their investments in advanced conservation, the public also receives a big payoff in the form of many decades worth of environmental benefits.

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<sup>38</sup> See Appendix at 113–14, 128–29.

<sup>39</sup> *Id.*

In the preamble, the agency states “producers who are members of the protected groups [including beginning and socially disadvantaged producers] have participated in NRCS conservation programs at parity with other producers.”<sup>40</sup> Later, the agency asserts that beginning and socially disadvantaged producers will not experience differential impacts from the changes to the program.<sup>41</sup> We find both of these statements incredibly flawed. The first is simply inaccurate, and the second fails to address the need to bring these historically underserved groups up to full parity. These assumptions greatly underestimate the unique difficulties beginning farmers in accessing CSP. The program continues the statutory directive to promote beginning farmer enrollment by setting aside five percent of CSP acres specifically for beginning farmers, and another five percent for socially disadvantaged farmers, but the rule proposes no new innovations to work with beginning farmers.

To date, NRCS has met or slightly exceeded the set-aside for beginning farmers. Under the 2008 Farm Bill, more than five percent of total funds and nine percent of CSP contracts (4,208 of 45,176 total contracts) were awarded to beginning farmers and ranchers. In FY 14, nearly nine percent of all funds and fourteen percent of all contracts went to beginning farmers (1,085 of 7,631 total contracts). That accounted for seven percent of acres enrolled in FY 14.

While we are pleased that the agency continues to satisfy the statutorily mandated set-aside, we urge NRCS to do more for these producers by setting its own enrollment goal for beginning farmers. Beginning farmers currently make up over 17 percent of farms and 25 percent of farmers (according to the 2012 Census of Agriculture), suggesting there is still a ways to go for CSP to reach parity, unsubstantiated claims in the IFR preamble notwithstanding. It seems both reasonable and fair for NRCS to set a goal for CSP to reach true parity. Doing so would provide support for the agency’s otherwise inaccurate assertion that parity has been achieved. It would also be an action consistent with the Secretary’s and Deputy Secretary’s initiatives for new farmers.

***IFR and Implementation Recommendation:*** Remove the incorrect assumptions about parity from the preamble to the rule, and set an agency goal of at least 15 percent of all CSP acres to be enrolled by beginning farmers.

## **B. Increasing Access for Small-Acreage Producers**

CSP must not only be more accessible to beginning farmers but also to small acreage farming operations, including farmers growing specialty crops and other high-value crops. Almost 65 percent of U.S. farms are between 1 and 179 acres in size, with one-third of U.S. farms ranging between 1 and 49 acres, according to the 2012 Census of Agriculture. Small acreage farms account for a significant portion of agricultural land and, as such, have tremendous potential to address resource concerns by enrolling in CSP. In addition, small-scale farmers tend to crop their land more intensively, which on the one hand entails greater risks of soil erosion, groundwater contamination and other resource concerns, but on the other hand makes it more feasible for the producer to adopt the highest level conservation measures such as intensive cover cropping and high level IPM, with correspondingly greater per-acre benefits.

However, CSP payments provided on a per acre basis to small acreage farms may not provide sufficient incentive to expend the time needed to analyze the farming operation, enroll in the

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<sup>40</sup> 79 Fed. Reg. at 65837,

<sup>41</sup> *Id.* at 65839.

program, create a CSP plan, and absorb the initial cost of increasing conservation activities on the farm. This dynamic has led to, and could perpetuate, a situation in which thousands of farms – and tens of thousands of acres in aggregate – do not find CSP accessible or worthwhile. Though small in acreage, these farms are often under intensive production and have unique resource demands, and could benefit the overall goals of the program.

To address this situation, we recommend that NRCS establish a minimum annual contract payment that applies to all eligible applicants. Initially, we recommend that the minimum contract payment be set at \$1,500 per year, with a process for evaluating whether or not the rate should be adjusted in subsequent years.

We made this comment during the CSP rulemaking following the 2008 Farm Bill. In response, NRCS established – and retains in this IFR – a minimum annual contract payment of \$1,000 for beginning, socially disadvantaged, and limited resource farmers.<sup>42</sup> This is undoubtedly a benefit for many farmers within this targeted group. However, NSAC recommends that NRCS both increase the minimum annual contract payment to at least \$1,500 *and* provide the minimum contract amount to all successful applicants.

The 2014 Farm Bill provides several factors that the Secretary may consider in determining CSP payment amounts, such as income forgone, expected conservation benefits, costs incurred by the producer, and other such factors as the Secretary determines are appropriate.<sup>43</sup> With the First Lady's efforts to improve nutritional standards and the Secretary's efforts to support small and mid-sized farmers as well as local and regional food systems – and faced with the same considerations described in Section (E) above regarding upward pressures coming from increasing land value, rental costs, and input costs – it is both reasonable and appropriate for NRCS to implement a provision that would result in better access to NRCS conservation programs for smaller acreage operations that have the potential to substantially improve resource concerns through intensive advanced conservation across small areas.

***IFR Recommendation:*** Raise the minimum annual payment level from \$1,000 to \$1,500 to ensure that program is cost-effective for smaller-acreage farming operations, including produce farms, and extend the new \$1,500 minimum payment level to all successful applicants to ensure that all farmers can benefit from the program.

The language should be changed to read as follows:

1470.24(c) *Minimum contract payment.* NRCS will make a minimum contract payment to participants ~~who are historically underserved producers,~~ at a rate determined by the Chief in any fiscal year that a contract's payment amount total is less than ~~\$1,000~~ \$1,500.

### **C. Enhancing CSP's Ability to Help Mitigate and Adapt to Climate Change**

Through CSP rulemaking and implementation, NRCS is perfectly poised to take steps to support climate change adaptation and mitigation in the agriculture sector. CSP provides the opportunity both to enhance support for those practices and systems with the greatest adaptation and mitigation

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<sup>42</sup> 79 Fed. Reg. at 65849; Section 1470.24(c).

<sup>43</sup> 2014 Farm Bill § 2101 (to be codified at 16 U.S.C. 3838g(d)(2)(G)).

potential, and to encourage the transition away from those with negative climate effects and less ability to cope with the pressure imposed by increasingly extreme and unpredictable weather events.

CSP takes a systems approach to resource conservation and management, supporting those low input and biologically diverse agricultural systems, including certified organic agriculture, that play an important role in addressing climate change. In addition to their ability to reduce GHG emissions and sequester carbon, these complex systems produce numerous co-benefits that will help farmers build resilient and viable systems of production.

In many parts of the country, farmers are experiencing the effects of drought, unusually high temperatures, and intense rain events. Climate change threatens to exacerbate such extremes and deepen our vulnerabilities to their impacts on agriculture.<sup>44</sup> We can better address drought and other extreme events by making our farms and ranches more resilient.

Among these efforts, conservation practices can build soil organic matter to increase the soil water holding capacity and carbon storage ability and decrease the need for highly coveted water resources. Organic matter build-up can occur in well-managed grazing systems. For instance, CSP Enhancement PLT16 (intensive rotational grazing) and Enhancement PLT02 (monitoring key areas to improve management) can result in better vegetation and soil conditions, improved nutrient cycling efficiency and water quality, enhanced wildlife habitat, and net carbon sequestration in soil profile. Ranchers should be encouraged to use these and several other grazing-related enhancements for their carbon sequestration benefits, as well as their contribution to the resilience of livestock production systems to weather extremes and climate change.

The CSP rulemaking process provides the agency with the opportunity to make significant changes – both regulatory and administrative – to enhance the program’s ability to support the President’s climate agenda, and our nation’s farmers and ranchers. Accordingly, we provide the following recommendations:

***Implementation Recommendation:*** When ranking applicants for NRCS programs, assessments of the conservation or environmental benefits index of different conservation activities should take net greenhouse gas emission and sequestration into account. NRCS should include climate and GHG considerations when assigning environmental benefit scores to conservation activities in CSP, and to CPPE scoring more broadly.

Moreover, applicants for NRCS conservation programs should be made aware of the climate-specific benefits of various activities. For example, CSP includes enhancements to support the use of legumes and organic inputs, like compost and manure, for nitrogen, as well as other conservation practices that reduce the use of synthetic nitrogen and improve management of unstable organic nitrogen. Some enhancements that contribute to better nutrient management and thus mitigate net GHG emissions of the system include ENR10 (Using N provided by legumes, animal manure, and compost), ENR12 (Use of legume cover crops as N source), and WQL22 (on-farm composting of farm organic waste). The climate change mitigation benefits of those enhancements should be advertised to farmers, and CSP applications containing these practices should be ranked and scored for their climate co-benefits.

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<sup>44</sup> See, e.g. <http://www.c2es.org/science-impacts/extreme-weather/drought>

***Implementation Recommendation:*** Incorporate on-farm energy audits into comprehensive conservation planning. The 2014 Farm Bill authorizes NRCS to provide financial and technical assistance for comprehensive conservation planning as part of a CSP contract. We recommend that the comprehensive conservation plan specifically include a climate adaptation and mitigation plan that demonstrates on-farm benefits, including energy savings.

***Implementation Recommendation:*** Work collaboratively with FSA to engage in extensive outreach to owners of land in expiring CRP contracts, and use CSP to transition those lands to perennial systems, only bringing those acres back into grassed-based and other agricultural production that are appropriate for such purposes. The CRP-to-CSP transition must be done in a way such that the valuable carbon sequestered in both the standing biomass and the soil is not lost.

When evaluating applications to enroll expiring CRP acres, NRCS should prioritize CSP contracts that will maintain CRP acres in forage-based production practices and systems. If the land is going to be cultivated for crops, then RCCRs should be prioritized. Even when done under a CSP contract, the conversion of grassland to cropland results in significant loss of environmental benefit. NRCS should work with CRP landowners to maximize the value retained from CRP enrollment.

***Implementation Recommendation:*** Use the Soil Health Initiative to increase promotion and education of CSP's supplemental payment option for resource-conserving crop rotations. Diverse cropping systems not only help to spread out risk of climate-related crop failures, but also provide significant conservation benefits. Resource-conserving crop rotations produce high yields, control pests and weeds with less reliance on pesticides, enhance soil fertility with less need for chemical fertilizers, and have the potential to enhance soil carbon sequestration.

***Implementation Recommendation:*** Develop climate change mitigation and adaptation related bundles that bring together multiple practices that increase carbon sequestration, reduce overall greenhouse gas emissions, and improve resilience to a changing climate. Such bundles can be developed separately for crop, pasture, and rangeland systems, focusing on soil, water, and livestock management practices that in combination offer some of the best approaches to reducing emissions and enhancing resilience. To make bundles more attractive and rewarding, a bundle bonus should be added to the cumulative environmental benefits scores. There should also be outreach and education specifically about this bundle opportunity.

## V. ADDITIONAL COMMENTS AND RECOMMENDATIONS

### A. Correct inaccurate statements regarding funding

In the preamble, the agency states that Congress committed \$1.8 billion each year from FY 14 through FY 18.<sup>45</sup> This represents a fundamental misunderstanding of congressional scoring on an acreage-based program. In actuality, Congress authorized *such funds as necessary* to enroll 10 million acres in the program each year. The preamble also states, "the 2014 Act only provided funding through FY 2018."<sup>46</sup> Yet, the agency goes on to explain that the five-year contracts plus renewal create financial obligations through FY 2027.<sup>47</sup> Moreover, congressional scoring assumes the

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<sup>45</sup> 79 Fed. Reg. at 65838.

<sup>46</sup> *Id.* at 65837.

<sup>47</sup> 79 Fed. Reg. at 65837.

continuation of this program beyond the current farm bill cycle, at the 10 million acre a year level, with the option for contract renewal. These statements are therefore grossly misleading and inaccurate, and should be removed to enhance understanding of the program.

***IFR Recommendation:*** Remove or correct these inaccurate statements regarding program funds.

### **B. Establish and maintain a consistent application timeline**

The rule notes the agency will continue accepting applications on a continuous basis “with one or more ranking periods to determine enrollment. One of the ranking periods will occur in the first quarter of each fiscal year to the extent practicable.”<sup>48</sup> While we strongly support continuous enrollment and the first quarter goal, we must note that the agency has *never* achieved this stated goal of ranking applications in the first quarter of each fiscal year. This is true again for the FY 15 sign up, and has consistently been the case in all of the past years.

We do not believe it is essential that the ranking period occur during the first quarter of the fiscal year; however, we strongly believe that the agency should be able to set and stick to a consistent timeline for announcing the application cut-off date and ranking period each year. Most important is for field staff, farmers, and the organizations that work with them to be able to receive the announcement of the program parameters for the coming year’s sign-up in a timely fashion; for sign-up to occur during the winter when farmers are relatively less busy; and for the period between the announcement of the program parameters for the year and the cut-off date for applications to last *at least two months*. Whether this occurs from November – December or January – February is less important than providing sufficient notice and opportunity to enroll. Failure to do so results in a program that is not user-friendly or as well utilized as it could be.

***Implementation Recommendation:*** Ensure that the sign up occurs each winter with at least two months for applications to be submitted once the full details of that year’s sign-up has been announced and has gone online.

### **C. Retain the modified definition of “enhancement”**

The agency has modified the definition of “enhancement.”<sup>49</sup> The original rule stated that “enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those enhancements directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.”<sup>50</sup>

The new rule defines enhancements as being “equal to or greater than the performance level for the quality criteria identified for a given resource concern,” as defined by the Field Office Technical Guide.<sup>51</sup> We support this change, which provides greater clarity on the link between an enhancement’s management intensity and the agency’s quality criteria.

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<sup>48</sup> *Id.* at 65844; 1470.2(c)(1).

<sup>49</sup> *Id.* at 65845; 1470.3.

<sup>50</sup> *See* 7 CFR 1470.3.

<sup>51</sup> 79 Fed. Reg. at 65845; 1470.3.



#### **D. Make a technical correction to section 1470.20(b)(2)(ii)**

Section 1470.20(b)(2)(ii) of the stewardship threshold requirements states that an applicant must meet or exceed a stewardship threshold by “improving, maintaining, *and* managing existing conservation activities.” This implies that a producer must be doing all three activities to satisfy the requirement. We believe this should read “improving, maintaining, or managing” conservation activities. For some producers who are already at the highest level of conservation for a particular activity, there may not be any way to further improve what they are already doing. It should be sufficient for such producers to continue to maintain and manage this high level of conservation.

***IFR Recommendation:*** Modify section 1470.20(b)(2)(ii) as follows:

Improving, maintaining, ~~and~~ or managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract application is accepted by NRCS.

#### **E. Clarify the list of conservation plans in the definition of “conservation practice”**

The definition of “conservation practice” includes a list of plans that qualify as conservation practices because they are “improvement that achieve the program purposes.”<sup>52</sup> This includes Comprehensive Nutrient Management Plans, agricultural energy management plans, dryland transition plans, forest management plans, and integrated pest management.<sup>53</sup>

We find this list perplexing. It is not exhaustive, but yet it includes very specific items to the exclusion of others. In particular, we object to the inclusion of a Comprehensive Nutrient Management Plan (CNMP) on this list, because that is a required practice under EQIP for concentrated animal feeding operations (CAFOs) seeking funding to build waste storage facilities. This practice is not eligible under CSP, so it is unclear why CNMPs are on this list at all. On the other hand, it is also not clear why nutrient management plans and grazing management plans, both clearly eligible as part of CSP, are excluded. To provide a more accurate representation of activities that achieve the program purposes, we strongly urge the agency to expand this list to include whole-farm comprehensive conservation planning. Doing so would also support Congress’s intent that comprehensive conservation planning be an activity for which producers can receive payment to develop, implement, and maintain.

We also note with alarm the absence of a transition to organic systems plan and of a pollinator habitat plan, this despite the statutory directive to make technical assistance available, and make program specifications appropriate for specialty crop and for organic producers and the statutory directive to establish a transparent means by which producers may initiate organic certification under the Organic Foods Production Act of 1990 while participating in a contract under the program.

***IFR Recommendation:*** Add comprehensive conservation planning to the list of activities that define “conservation practices.” Add transition to organic systems plans and pollinator habitat plans to the list of activities that define “conservation practices.” Add nutrient management plans and grazing management plans to the definition, but remove the non-germane reference to CNMPs.

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<sup>52</sup> 79 Fed. Reg. at 65845.

<sup>53</sup> *Id.*

We appreciate your consideration of these recommendations, and we look forward to continued engagement with the agency to successfully implement the 2014 Farm Bill statutory changes and enhance CSP program enrollment and delivery.

Sincerely,



Ferd Hoefner  
Policy Director



Sophia Kruszewski  
Policy Specialist