

Comments of the Izaak Walton League of America
on the U.S. Department of Agriculture Natural Resources Conservation Service
Programmatic Environmental Assessment of the Conservation Stewardship Program and
Finding of No Significant Impact
December 12, 2019

We appreciate the opportunity to provide comments on the USDA Natural Resources Conservation Service Programmatic Environmental Assessment for the Conservation Stewardship Program, notice at 84 FR 60883, and the Finding of No Significant Impact based on that Environmental Assessment. The USDA has important discretionary decisions to make concerning implementation of the changes made by Congress to the Conservation Stewardship Program in the 2018 Farm Bill. The Programmatic Environmental Assessment should be a document that identifies alternative approaches to implement these discretionary changes, and one that provides analyses to help the USDA and the public understand the environmental implications of those alternatives as the agency makes those decisions.

Unfortunately, it is not. The Programmatic Environmental Assessment (PEA) only identifies one viable alternative. It fails to identify a range of alternatives available to implement the provisions where USDA has substantial discretion to act, and it fails to provide meaningful analyses of the differing impacts of those alternatives on the affected environment. These failures should be corrected before the programmatic environmental assessment is finalized. As a result of these deficiencies, we believe the Finding of No Significant Impact based on the PEA is faulty as well.

USDA implementation of the changes made to the Conservation Stewardship Program (CSP) could have a significant impact on the environment, in both positive and in negative ways. For example, Congress removed statutory language that limited CSP renewals to the renewal of an “initial” CSP contract, allowing USDA to offer renewals to a farmer with an “existing” contract (2018 Farm Bill¹, Sec. 2308(c)). Based on its Interim Final Rule, USDA appears to propose to use its discretionary authority to decide that it would not offer renewals except during the fifth year “of the initial contract period” (amended Section 1470.26(a), at 84 FedReg 60898). USDA’s implementation also apparently contemplates allocating available funding between new contracts and contract renewals, with much of the funding allocated to new CSP contracts.

Some farmers who have adopted new farming and ranching systems with support from a CSP contract may find that, absent the CSP payment, some or all of the practices they adopted may not make financial sense to continue for their operation. A farmer adopting a suite of soil health practices (for example) may find that the benefits of healthy soils (in reduced fertilizer or pesticide costs and reduced soil erosion) outweigh the cost of soil health practices like planting cover crops and diverse crop rotations. However, the farmer could find that a wildlife practice

¹ Agriculture Improvement Act of 2018, PL No. 115-334, herein the 2018 Farm Bill.

like maintaining pollinator habitat would no longer make financial sense (if, for example, they are growing crops that are self-pollinating). In addition, with farm commodity prices low due to ongoing trade wars and other market factors, and many farms experiencing several years of net losses, the loss of CSP financial support could be enough to put some farms out of business. When that happens, the environmental benefits gained through the past adoption of conservation practices and systems could all be lost if the farm changes hands to someone prepared to abandon those practices and systems and go back to conventional farming or ranching practices.

With more than 70 million acres under 5-year CSP contracts, the scale of lost environmental benefits is potentially very large and certainly deserves analysis. NRCS discretionary decisions on how it will allocate or score renewal applications versus new applications could have substantial impacts on those environmental costs and benefits. These are very foreseeable outcomes stemming directly from NRCS discretionary decisions, and they warrant more careful analysis by NRCS of the impacts and alternatives that might mitigate the impacts.

USDA collects data from farmers on practices in place, such as through the annual Cropping Systems Inventory conducted by the South Dakota NRCS². USDA should therefore have data available that would let it compare the loss of conservation systems and practices (and resulting loss of environmental benefits) that occurs when CSP contracts are not renewed, versus the level of conservation on farms where CSP contracts are renewed.

A foundation of National Environmental Policy Act environmental review is the requirement that agencies identify a range of reasonable alternatives to the decisions the agency proposes to make, carry out an analysis comparing those alternatives, and give the public an opportunity to comment on the alternatives and agency analyses. The process is designed to inform the final agency decision. By failing to develop or assess meaningful alternatives, we believe the PEA fails to meet the guidance provided by the Council for Environmental Quality and the legal requirements under the National Environmental Policy Act.

Guidance provided by the Council for Environmental Quality on the effective use of programmatic NEPA reviews notes that “NEPA requires Federal agencies to consider the effects of a proposed action and any reasonable alternatives on the human environment³” (emphasis added). The guidance goes on to say:

“The purpose and need statement is key to developing the NEPA review, as it establishes

² USDA NRCS, at <https://content.govdelivery.com/accounts/USDANRCS/bulletins/270e810>

³ Executive Office of the President, Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies; Subject: Effective Use of Programmatic NEPA Reviews*, Washington, DC, December 18, 2014, p. 5.

the scope of the analyses, range of reasonable alternatives, and frames the decision to be made. The purpose and need for a programmatic review will differ from the purpose and need for a project- or site-specific EA or EIS. The purpose and need for a PEA or a PEIS should be written to avoid eliminating reasonable alternatives and focused enough for the agency to conduct a rational analysis of the impacts and allow for the public to provide meaningful comment on the programmatic proposal.⁴

We believe the Council on Environmental Quality (CEQ) guidance can support the use of current program implementation (i.e., pre-2018 Farm Bill) as a “no action alternative” which serves as a baseline for comparison purposes. *However*, where USDA chooses that course, it must still provide more than one viable alternative for its analysis. USDA cannot meet this requirement by offering only two alternatives, one of which (the pre-2018 Farm Bill) is not a legally viable or defensible alternative that USDA could actually implement.

The PEA uses the law prior to passage of the 2018 Farm Bill as the No Action Alternative, and includes only non-discretionary changes required by Congress in the Proposed Action, which is the only viable alternative offered. While that type of assessment might have been helpful to Congress in enacting the legislation, it is not useful in helping USDA or the public assess the likely impacts of discretionary decisions to be made by the agency in implementing the legislation. We believe the CEQ guidance and the NEPA law requires that USDA develop reasonable alternatives beyond the one viable “Agency Proposed Action” presented, and those alternatives should reflect the major discretionary decisions USDA can make to implement the revised program.

The Council on Environmental Quality Guidance clearly contemplates the development and analysis of alternatives to the agency’s proposed action, and it specifically notes that “the standard NEPA requirements for alternatives apply.”⁵ Key discretionary decisions facing the U.S. Department of Agriculture in implementing the CSP provisions include how to allocate dollars or judge the relative benefits of CSP renewals versus new contracts; how to implement the statutory provision providing for equal weighting of the benefits of new systems and practices and the benefits of maintaining existing systems and practices and whether to add “other consistent criteria” (Sec. 2308(c)) to that calculation; whether to maintain USDA’s current regulatory prohibition on funding renewal of a second or subsequent CSP contract in the face of Congressional intent expressed by the removal of that statutory prohibition (Sec. 2308(c)); and how to “manage the program to enhance soil health” (Sec. 2308(d)(9)).

Each of these decisions could have a substantial impact on the environmental benefits of the program and the potential loss of benefits now provided through existing CSP contracts. In each

⁴ Ibid, p. 18-19.

⁵ Executive Office of the President, Ibid, p. 21.

case, information and data should be available that would allow USDA to evaluate the benefits, costs, and feasibility of implementing various options. Although as the PEA explains the program cannot control which landowners apply for CSP contracts, USDA does have decades of experience in managing conservation programs and in understanding the environmental benefits and costs likely to result from alternatives to implementing the program.

In summary, the Draft PEA as written does not provide adequate NEPA coverage. The Final PEA should identify a range of alternatives for implementing the discretionary decisions to be made by USDA, provide an evaluation of the likely impact of those alternatives, and give the public transparency and a reasonable opportunity to comment on the alternatives and the USDA evaluation of those alternatives.

As part of the environmental review, USDA should develop and assess those reasonable alternatives for each major decision needed to implement the program moving forward, reflecting the areas where the agency has been given substantial discretionary authority by Congress.

We appreciate the opportunity to provide comments on the USDA Natural Resource Conservation Service Programmatic Environmental Assessment for the Conservation Stewardship Program, and the resulting Finding of No Significant Impact. The USDA has important decisions to make concerning implementation of the significant changes made by Congress to the program in the 2018 Farm Bill. This environmental assessment process under the National Environmental Policy Act should provide transparency and an opportunity for the public to comment, and it should be structured to provide valuable information to the agency as it decides how to implement those provisions.

We would be pleased to provide further information or to discuss these comments.

Duane Hovorka, Agriculture Program Director
Izaak Walton League of America
707 Conservation Lane, Suite 222
Gaithersburg, MD 20878



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