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Comments of the Izaak Walton League of America on
Conservation Stewardship Program Interim Rule
Federal Register, 12 November 2019, 84 FR 60883, pages 60883-60900.

Dear NRCS Associate Chief Norton and CCC Executive Vice President Stephenson,

The following are the comments of the Izaak Walton League of America on the Conservation Stewardship Program Interim Rule. The Izaak Walton League of America is one of our nation's oldest national conservation organizations, and has been working to defend our soil, air, woods, waters, and wildlife since 1922. Our 40,000 members hunt, fish, hike, camp, canoe, conserve, and greatly appreciate and enjoy the great outdoors. Our work on agricultural policy dates back at least to the 1930's, when the League proposed a national program to protect fragile fields and streams in high mountain valleys by converting cropland back to grassland. In the 1950's, the League's Walton Soil Plan presaged federal Soil Bank legislation of the 1950's and 1960's. Over the decades, the League has supported better farm and ranch stewardship through voluntary conservation programs and common sense provisions like Sodbuster, Swampbuster, and SodSaver.

We identify four key issues with the U.S. Department of Agriculture implementation of the Conservation Stewardship Program, summarized below, and then provide input on a number of specific provisions of the Interim Rule.

Make Full Use of Available Funding – NRCS had $680 million in carry-over CSP authority that Congress said was to be used for extensions of contracts, Regional Conservation Partnership Program obligations under the 2014 Farm Bill, and new and renewed CSP contracts. Most of that money has not yet been obligated or used for CSP program purposes. Today, USDA faces additional demand from farmers and ranchers for CSP program contracts, and faces the expiration (and potential renewal) of two years' worth of CSP contracts as well as new Grassland Conservation Initiative obligations. The remaining CSP carryover funds should be used to supplement funding available for CSP contracts to help avoid a substantial drop in the number of CSP renewals and new contracts for FY 2020 and beyond, and used to offer comprehensive conservation planning and soil health planning add-ons to existing and new CSP contracts.

Soil Health -- The Interim Rule should respond to clear direction from Congress to manage the program to enhance soil health, by making soil health a priority in program delivery through activities including

soil health testing, soil health planning, soil health practice assessment, and added ranking points for suites of practices and enhancements that restore and protect soil health.

Payment Limits – The Interim Rule should be revised to reflect the $200,000 statutory limit for both individuals and joint entities, to help spread the reduced revenue available for regular CSP contracts to help more participants boost their conservation performance.

Support Ongoing Conservation – Congress provided a streamlined list of two factors for evaluating applications and awarding incentive payments, which includes supporting both ongoing conservation and new conservation activities. Yet the Interim Rule appears to put even more emphasis on new conservation activities versus ongoing conservation benefits in awarding CSP contracts and determining payments. USDA should honor Congressional intent by ensuring that ongoing conservation activities receive support through the program.

We first provide information on those four key issues, and then turn to some discussion of specific provisions in the Interim Rule.

1. Full Use of Available Funding.

The 2014 Farm Bill established the Conservation Stewardship Program as an acreage-based program, and the 2018 Farm Bill continued the program but converted it to a funding-based program. In the transition between Farm Bills, a reported $680 million in carryover funding was made available by Congress for the CSP to provide for contract extensions, renewals, and new contracts. USDA reportedly used or reserved a portion of those funds for 1-year extensions of CSP contracts that expired during the transition and for Regional Conservation Partnership Program activities (for which the CSP was a donor under the 2014 Farm Bill), but the remainder has not been obligated or spent for CSP purposes.

The CSP faces substantial funding pressure. Because of the 1-year extensions provided for expiring contracts during the transition, there are now two years' worth of CSP contracts expiring this year. The Grassland Conservation Initiative will provide financial support through the CSP to farmers who are losing their 'Freedom to Farm' commodity payments because they converted cropland with commodity program base acres to grassland. The NRCS Environmental Assessment for the CSP estimates that 2.5 million acres of land could be eligible for GCI payments, and says the cost could total 5.5% of the total CSP authorized funding under the 2018 Farm Bill.

Those new demands on CSP funding are on top of the reduced commitment of funding from Congress for CSP contracts, and annual demand for CSP contracts that consistently exceeds the available funding. Also contributing to funding pressures are provisions in the 2018 Farm Bill (that we supported) providing for higher payments for cover crop activities (125%), resource conserving crop rotations (150%), and advanced grazing management systems (150%).

We believe the carry-over funding should be used to increase funding available for renewal and new CSP contracts, ensuring the funds will be used as Congress intended and helping address the short-term funding pressures on the program. Unless this happens, we are likely to see far fewer CSP contract renewals (which will reduce conservation delivered and reduce farmer/rancher interest in the program), and potentially fewer new CSP contracts which will also dampen enthusiasm for future signups.

These CSP carry-over funds should be used to fund additional CSP renewals and new contracts, helping to avoid or reduce a substantial drop in CSP renewals and/or new CSP contracts that could otherwise occur.

The 2018 Farm Bill also specifically provided for several new conservation activities eligible for funding under CSP, including development of a comprehensive conservation plan, soil health planning (including planning to increase soil organic matter), and activities to help producers adapt to or mitigate against increasing weather volatility (Section 2308(a)). Comprehensive conservation plans and soil health plans are discrete, one-time activities that can be critically important to the advancement of conservation systems and the adoption by farmers and ranchers of additional, higher levels of conservation in the future. Because these are important but new activities, we believe NRCS should promote comprehensive conservation plans and soil health planning in all new and renewal CSP contracts.

We also believe NRCS should use a portion of the CSP carryover funding to offer support (both technical and financial assistance) for comprehensive conservation plans and soil health planning as one-time add-ons for farmers and ranchers with existing CSP contracts. America's natural resources, along with our farmers and ranchers, would see substantial benefits from this approach as part of a larger soil health initiative.

2. Soil Health

The 2018 Farm Bill provides specific direction from Congress in Section 2308: "Soil Health. To the maximum extent feasible, the Secretary shall manage the program to enhance soil health." The 2018 Farm Bill also adds to the activities under CSP "(iv) soil health planning, including planning to increase soil organic matter." The Managers Explanation in the Conference Report accompanying the bill offers more insight: "The Senate bill …. requires the Secretary, to the maximum extent feasible, to manage the program to enhance soil health…. The Managers intend for USDA to encourage States to give higher consideration to contracts that include conservation activities to improve soil health, where this consideration is appropriate and in line with local conservation priorities. This can take the form of higher-ranking points or other similar prioritization of soil health in producer applications."

Unfortunately, the Interim Rule includes very little mention of soil health. The language of the Interim Rule itself only mentions "soil health" three times that we can find, listing soil health assessments as one appropriate assessment tool (§ 1470.2(c)(2)), including soil health in the definition of "advanced grazing management" (§ 1470.3), and its inclusion in the definition of "conservation activities" (§ 1470.3). The explanatory information accompanying the Interim Rule provides no helpful insight on how NRCS plans to implement this important directive from Congress to manage the CSP to enhance soil health.

The NRCS Environmental Assessment for the CSP does offer some limited insight of the proposed NRCS approach (at page 35): "As required by the 2018 Farm Bill, CSP will be managed to the greatest extent practicable to enhance soil health. Farming using soil health principles and systems that include the use of reduced tillage, cover crops, and diverse crop rotations results in increased soil organic matter and soil microbial activity. Healthy soil sequesters more carbon, increases water infiltration, and can improve wildlife and pollinator habitat, as well as increase crop yields. Under Alternative 2, NRCS will implement

this requirement by modifications to CSP enhancement job sheets to specify criteria participants must use to enhance soil health."

Unfortunately, "modifying CSP enhancement job sheets to specify criteria participants must use to enhance soil health" is hardly a comprehensive approach to ensuring that CSP is managed "to the maximum extent feasible to enhance soil health." **The CSP includes a number of important tools that could and should be used by NRCS to help farmers and ranchers enhance soil health.** Those include:

* *Soil health planning*. NRCS has a number of planning protocols for natural resources, (including, for example, comprehensive nutrient management, integrated pest management, and grazing management plans), but it does not yet have a soil health planning protocol for farmers or ranchers who want to craft a plan to boost the biological health of their soils. That planning activity was specifically authorized by Congress as a CSP-eligible activity, and NRCS should complete its work to develop soil health planning protocols for cropland, grazing land, and other agricultural lands, and make them widely available to farmers and ranchers including through technical assistance and financial assistance included in CSP contracts.

* *Soil health bundles*. NRCS has identified a number of soil health enhancement and practice bundles under CSP, which it makes available on a state by state basis. NRCS could better promote the use of those soil health bundles in its outreach to farmers, and could (as it proposes) also modify CSP enhancement job sheets to specify criteria participants must use to enhance soil health. NRCS should also provide additional ranking points or otherwise prioritize soil health in CSP applications to recognize the many benefits soil health systems deliver for water quality, soil erosion, carbon storage, yield resilience to changing climate and weather, and wildlife.

* *Soil health testing*. NRCS has been working to identify appropriate protocols for measuring and testing soil health. NRCS should complete this work, provide farmers and ranchers with readily understandable information on the appropriate soil health measurement and testing protocol for their purposes through CSP technical assistance, and provide financial support through CSP, EQIP, and RCPP contracts for farmers to purchase appropriate soil health tests to assess, measure, and track changes in soil health. NRCS should also make annual soil health testing an automatic part of every contract it writes related to soil health and related practices, so farmers and ranchers (and NRCS, see below) can track outcomes on an annual basis.

* *Assessing soil health systems*. In providing financial assistance for soil health planning, practices, systems, and testing, NRCS should start building in to its contracts reporting on outcomes to NRCS. For example, NRCS should receive a copy of soil health tests and information on practices or enhancements it helps fund for farmers through CSP (or EQIP, or RCPP) contracts, along with basic yield and practice data. That information could be kept confidential at a producer level pursuant to Farm Bill privacy laws, but could be used in the aggregate to measure the effectiveness of different practices and systems of practices in restoring healthy soils, and any accompanying impact on yield or other important factors.

We think there are likely other creative ways for NRCS to better leverage the CSP to enhance soil health, but we offer these as a starting place. We think NRCS should include discussion of these kinds of soil health initiatives, along with commitments to take needed action, in the final Environmental Assessment and the rule.

3. Payment Limits

§ 1470.24(h) of the Interim Rule removes the annual $40,000 limit on CSP payments but retains the $200,000 limit on 5-year contract payments for individuals. It also removes the annual $80,000 limit on CSP contract payments to joint operations but maintains the $400,000 limit on 5-year contract payments to joint operations in the current rule. We support the removal of language limiting CSP payments to $40,000 (or $80,000) per year, given the NRCS intention to remove language in this section designed to provide for leveling of CSP annual payments over the life of the contract, and a stated intent to allow for more widely fluctuating annual payments.

However, the statute (16 USC 3839aa-24(f)) seems very clear that the payment limit for any person or legal entity (joint or otherwise, excepting only Indian Tribes) should not exceed $200,000 over 5 years:

> "Payment limitations. A person or legal entity may not receive, directly or indirectly, payments under the program that, in the aggregate, exceed $200,000 under all contracts entered into during fiscal years 2019 through 2023, excluding funding arrangements with Indian tribes, regardless of the number of contracts entered into under the program by the person or legal entity."

We believe the language of the rule allowing for a CSP contract limit of up to $400,000 over five years for a joint operation exceeds the statutory authority given to USDA under the Farm Bill. We ask you to remove that language from the Interim Final Rule, and limit all contracts for individual or joint operation to $200,000 over five years, excepting only agreements with Indian Tribes as outlined in § 1470.24(i).

In addition to the legal reasons for removing the $400,000 language from the rule, there are strong public policy reasons. As noted above, there are reductions in available funding for CSP renewals and new contracts, stemming from changes in the Farm Bill to CSP, the new Grassland Conservation Initiative, and having two years' worth of CSP contracts expiring this year. Maintaining the $200,000 contract limit for both individuals and joint entities would still provide substantial support for every size operation, while helping spread limited CSP resources over a larger number of farmers. The Interim Rule should be revised to reflect the $200,000 statutory limit for both individuals and joint entities, to help spread the reduced revenue available from the program to more participants.

4. Support for Ongoing Conservation

Congress provided a streamlined list of just two designated factors for evaluating applications and awarding CSP payments, and those two factors focus on supporting both ongoing conservation and new conservation activities. Yet the Interim Rule appears to specifically retain past NRCS emphasis in evaluating applications by favoring new conservation activities versus ongoing conservation benefits in awarding CSP contracts and determining payments.

The Conference Report on the 2018 Farm Bill provides some important insight on Congressional intent: "The Managers direct the NRCS to ensure that existing and future CSP participants are given the opportunity to renew expiring contracts before their original 5-year contract is set to expire. Given that expiring contracts will no longer be eligible for automatic renewals and instead must compete **within the**

same pool as applicants applying for a new contract, the Managers direct NRCS to ensure that the renewal process begins at the beginning of the fifth year of the original contract so that contracts are re-enrolled before they expire. The Managers expect USDA to rank the renewal offers **according to the same two primary ranking criteria used for new contracts**, in addition to including the results from previous contracts" (*emphasis added*).

The Interim Rule revises the standards for evaluating CSP applications for new enrollment or renewal. We support the language in the rule that provides the same criteria for both new enrollments and for renewals, which is consistent with the approach Congress specified in the 2018 Farm Bill. The evaluation language in the rule generally tracks the statutory language, focusing on the two primary factors: the conservation benefits that result from treatment in place at the time of the application, and the degree to which proposed conservation activities increase conservation.

However, the explanation accompanying the Interim Rule says "NRCS intends to continue evaluating applications based on the level of expected environmental benefit achieved through adoption of additional conservation activities. Currently, NRCS provides higher ranking points to applicants who agree to adopt more conservation activities in order to meet or exceed the stewardship threshold of a higher number of resource concerns, agree to adopt the additional conservation activities over a greater percentage of their operation, adopt bundles, and adopt conservation activities that target wildlife habitat improvement and soil health. NRCS also uses an efficiency score component in the ranking which considers the environmental benefit associated with an applicant's planned additional conservation activities and the costs associated with implementing these activities. In this way, NRCS prioritizes applications that will provide higher levels of conservation and environmental benefits across the agricultural or forestry operation." What seems clear is that the NRCS emphasis by far is on the benefits of new conservation activities when compared to the benefits of ongoing conservation, even conservation provided through an earlier CSP contract. That seems contrary to the stated intent of Congress to consider *both* ongoing conservation benefits and new conservation activities in ranking and providing payments under CSP.

We think NRCS should honor Congressional intent by ensuring that ongoing conservation receives support through the program, by using an evaluation formula that provides substantial weight to the level of ongoing conservation benefits provided by the applicant through measures in place at the time of the application, including recognition of improvements made through past CSP contracts, along with the conservation benefits of new proposed activities. That same balanced approach should inform NRCS allocation of funds between contract renewals and new contracts. Where farmers and ranchers are already providing substantial ongoing conservation benefits, and agree to do even more in a renewal contract, those benefits should receive due consideration when weighed against an applicant who is currently providing a much lower level of ongoing conservation benefits but agrees to make improvements.

In fact, based on the statutory language above, applications for new and renewal CSP contracts should compete "within the same pool" rather than be scored in separate pools. That can work where all applicants are scored based on the two designated criteria: benefits of ongoing conservation, and benefits of new conservation activities. But if NRCS gives inordinate weight to additional activities versus ongoing activities, then the very best conservation farmers and ranchers could have very little hope of obtaining a CSP contract because they will be limited in their ability to adopt new, useful activities.

The Interim Rule includes as a third evaluation factor "other consistent criteria, as determined by NRCS, including criteria the Chief determines are necessary to ensure that national, State, and local priority resource concerns are effectively addressed" without specifying what that criteria might be or its relative weight. While this is not inconsistent with the statutory language, we think NRCS should spell out in the rule the other criteria (if any) it is contemplating using, as well as the relative weight NRCS will assign to that criteria versus the two that are spelled out in statute. In fact, this would be an appropriate alternative option for NRCS to assess in the final Environmental Assessment, to provide the agency and the public with a better understanding of the options available and likely impacts. At a minimum, we think in evaluating CSP applications NRCS should put the bulk of the emphasis and weight equally on the two criteria spelled out in statute.

We turn now to additional specific comments on particular provisions of the Interim Final Rule.

Grassland Conservation Initiative (Sec. 1470.28)

The 2018 Farm Bill (§ 2309) authorizes a new Grassland Conservation Initiative (GCI) through the CSP. The statutory purpose is "assisting producers in protecting grazing uses, conserving and improving soil, water, and wildlife resources, and achieving related conservation values by conserving eligible land through grassland conservation contracts," which include a "grassland conservation plan developed for eligible land" that will address resource concerns and activities relating to grassland. We appreciate and support the rule's provisions requiring that GCI participants must agree to meet or exceed the stewardship threshold for at least one priority resource concern before the end of the contract, as required by the statute. Congress clearly intended the initiative to conserve grassland, and we believe USDA is correct in requiring minimum levels of grassland stewardship for all GCI contracts.

With respect to subsection (e), we believe the language should refer to a "grassland conservation plan" (rather than a "GCI plan") to track the statute and its primary purpose, and the language should include the first two provisions (encompassing all enrolled land, and requiring adoption of conservation activities to address grassland resource concerns.) However, allowing the land to be cropped would defeat all of the stated purposes of the initiative, and does not appear to have a basis in the statute. Converting grassland to cropland leads to soil erosion, destroys wildlife habitat, impacts water quality, releases soil organic matter and carbon, and in most cases eliminates the grazing use of the land. (Language in the new statute referring to the grassland being "considered planted" to a covered commodity refers to Title 1 provisions that confer benefits under the commodity title, and are similar to provisions for land planted to grass under programs like the Conservation Reserve Program that must remain in grassland plantings for the duration of the CRP contract.)

We strongly urge NRCS to not allow producers to plant crops on land enrolled in GCI in the final rule for all of the above reasons.

At a very minimum, if NRCS allows GCI grassland to be cropped, NRCS should use very strict criteria for determining whether to allow participants to plant crops and continue to receive GCI contract payments, such as only allowing such payments if participants meet specific resource conditions that equal or exceed the resource benefits if the land were planted to or maintained in grass. Participants have the option, if they are unwilling to meet those stewardship levels or other conditions, of terminating their GCI contract and retaining payments already received without penalty.

Because the stated purpose of the initiative is grassland conservation, we would urge NRCS to also offer to provide technical assistance to potential applicants to ensure that they understand the option of seeking a regular CSP contract (which, depending on the operation, could result in higher overall payments to the participant and higher overall conservation benefits), and to active participants in the program to maximize the conservation benefits on the grassland enrolled, including grazing management plans or soil health planning. That should also include practices that maximize wildlife and other benefits, such as encouraging diverse mixes of native grasses and forbs and grazing management plans that improve soil, water and wildlife resources.

It is not clear to us whether Congress considered if any of the farms eligible for the GCI might already have regular CSP contracts, and the fairness of those farmers losing their 'freedom to farm' payments without having access to the payments authorized under GCI if they are prohibited from having both a regular CSP contract and a CSP CGI contract on the same land. We have no information on whether any such participants exist, but would ask that NRCS identify the extent to which there are such farmers and options NRCS might have for mitigating the situation.

CSP applicability in the West. In speaking with organizations who work with farmers in the western USA, a common complaint is that the CSP is not a good fit for farms and ranches in the semi-arid regions of the western USA. We see no reason why this should be the case, because the whole farm, multi-resource approach of the CSP should lend itself well to addressing water conservation, grassland management, soil health, and other resource concerns in the West just as well as in other regions of the country. We think part of the problem may be a lack of NRCS priority on using the program, a lack of training of NRCS employees on the program's benefits, and a lack of outreach to farmers and ranchers in the West on the benefits of the CSP.

From the Managers Report in the Conference Agreement (Title II (23)): "The Managers intend for CSP and EQIP under Chapter 4 to provide flexibility at the local level to address issues for all production systems, especially those in semi-arid areas where there is a need for practices to increase water savings and climate resiliency. For example, wheat growers need to be able to access the program through conservation practices that are specific to local production needs and that includes areas with lower rainfall. The Managers believe USDA should provide appropriate conservation practice and enhancement options for producers that focus on drought mitigation and dryland agriculture."

The rule does not directly address these important issues, but we are encouraged by NRCS leadership statements during briefings on the new rule that NRCS intends to do its best to make the CSP work in all regions of the country, and that initial allocations of CSP dollars to states will not be driven by the state's historical success (or lack of success) in using CSP dollars. We agree with this approach. In areas where states have not done well in utilizing their full CSP allocation, we urge NRCS to focus efforts on development of locally appropriate enhancements and bundles that will address the priority resource concerns and meet farmer and rancher needs, training and education of NRCS field office employees on the benefits and applicability of the CSP, and outreach to farmers and ranchers on the benefits of the program.

Public land eligibility (Sec. 1470.3). With respect to the definition of "eligible land" in Sec. 1470.3, we support the intent to allow a participant to include public land in the CSP contract where it is an integral part of the operation, however (1) we think the term "effective control" of the land should be used instead

of "control" of the land to be consistent with the definitions in this section and language in Sec. 1470.6(a)(3), and (2) the rule should make clear that the requirement that the contract holder have "effective control of the land" applies consistently to both the private and Tribal land and the public land provision. That could be done by moving the "effective control" language up in the definition, as in: "Eligible land means land under the effective control of the producer for the term of the contract, including: (1) Private and Tribal land upon which …"

Management-intensive rotational grazing (Sec. 1470.3). The definition of management-intensive rotational grazing tracks the statutory definition but is scientifically inaccurate. Increased carbon sequestration in the soil from this practice comes not from greater forage harvest per se, but from the root growth, sloughing, regrowth, and additional biological activity in the soil that results from a cycle of brief intense grazing and long recovery periods. To make the definition more clear and scientifically accurate, we suggest the definition be revised to say: "(3) Increases carbon sequestration through enhanced biomass, especially increased development, depth, and turnover of living roots."

Priority resource concern (Sec. 1470.3). By removing the explanatory language, the rule's new definition of priority resource concern appears to blur the historic distinction between a "resource concern" and a "priority resource concern". A resource concern becomes a "priority" resource concern that applies within a state when designated so pursuant to Section 1470.2(d)(2). We suggest the following:

> "*Resource concern* means a natural resource concern or problem, as determined by NRCS, that is likely to be addressed successfully through implementation of conservation activities under this program."
>
> "*Priority resource concern* means one of the five or more resource concerns in an area selected pursuant to §1470.2(d)(2)."

Beginning and socially disadvantage farmers minimum commitment and veteran farmer preference (Sec. 1470.4). Section 1470.4(c) commits NRCS to using a minimum of 5% of CSP funds to assist beginning farmers and ranchers, and at least 5% to assist socially disadvantaged farmers and ranchers. We recognize that the 5% minimums track the statutory language and appreciate that the language sets those commitments as minimums. We note that farmers and ranchers who meet the definition of "beginning" represent 10% of production and 17% of farms (according to the Economic Research Service), and socially disadvantaged farmers represent 8% of all principal farm operators (according to the General Accountability Office). We also note that USDA has a very poor historical track record of providing services (and even actively denying USDA programs and services) to socially disadvantaged farmers and that has resulted in a large shift of income and land away from this category of producers over the past decades. Clearly there is much more NRCS should be doing to ensure that these historically underserved populations receive the benefits of USDA programs. We also recognize that the populations of socially disadvantaged and beginning farmers and ranchers vary significantly from state to state.

We urge the agency to adopt in the rule a commitment to use, at a minimum, 10% of CSP funds for each category (beginning farmers and ranchers, and socially disadvantaged farmers and ranchers) agency-wide, and commit to a minimum of using at least 5% for each category in every state.

We also note that by removing language in the previous rule Sec. 1470.4(d) that provided a preference to veteran farmers and ranchers in awarding contracts to beginning or socially disadvantage farmers, the interim rule would eliminate the former priority given to veteran farmers who also qualify in one of those two categories. Although the rule would now include veteran farmers as 'historically underserved' in the CSP definition (Sec. 1470.3), the new rule no longer appears to provide any special preference for farmers (like veterans) who meet the definition of 'historically underserved' but are not beginning or socially disadvantaged, except that they will be targeted for outreach on the program by USDA. NRCS and some organizations have made efforts to better understand and meet the needs of veteran farmers and ranchers and address some of the special challenges they face, and we think it is important that those efforts continue and grow. It isn't clear what the economic impact of this loss of this veteran preference means, and it was not addressed in the program's Environmental Assessment. However, the loss of the preference could be mitigated by our suggestion that USDA commit to using at least 10% of CSP funds for each category (beginning farmers and socially disadvantage farmers), which could translate into increased access to CSP benefits for veteran farmers and ranchers in both categories.

Technical assistance (Sec. 1470.8). The rule would remove language that commits NRCS to provide appropriate training to field staff to allow them to help organic and specialty crop producers. We understand the stated reasons for removing this language, but hope it does not reflect a reduction in commitment on the part of NRCS to ensure staff are trained on the program in general and on the needs of organic and specialty crop producers. In our discussions with farmers and organizations who work directly with farmers, we were told more than once that some farmers and ranchers who attempted to apply for a CSP contract first had to teach their local NRCS staff about the program, and often overcome NRCS staff biases against the CSP. To ensure that the program returns maximum benefits to taxpayers, NRCS field staff must be trained on the benefits of the CSP and educated to understand the producers who could most benefit from the program.

Payment structure (Sec. 1470.24). It appears NRCS may be making substantial changes in the CSP payment structure with respect to new practices and enhancements versus existing conservation activities, and if so it appears the changes move away from statutory language and Congressional intent for the program. First, the rule continues to include language on the intent of the split-rate annual payment structure: "…in order to place emphasis on implementing additional conservation." That language runs counter to the statute, which does *not* provide for emphasizing new versus ongoing conservation activities in either the selection of applications or the calculation of payments. That language should be stricken.

The rule's new payment language includes "equal annual payments for the existing activity portion of the payment, specific to the operation, based on the land uses and NRCS assessment of existing stewardship," plus payments for additional activities "based on the complexity and extent of the individual activities completed by the participant during the previous fiscal year." While both are vague, they provide two different methods of calculating CSP payments. Under the statute (16 USC §3838g(2)), the amount of the CSP payment for both ongoing activities and new conservation activities should based on the same six factors, three of which should be the same whether a conservation activity is ongoing or new: income foregone, expected conservation benefits, and the degree to which conservation activities will be integrated across the entire agricultural operation for each applicable priority resource concern over the term of the contract. A fourth, cost, should be the same or at least similar, recognizing there are start-up costs for some practices but noting that ongoing management and maintenance costs should generally be

the same whether an activity commenced before or after contract approval. The other two 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" and "(e) the level of stewardship in place at the time of the application and maintained over the term of the contract," which represent the only statutory basis for different payments between new and ongoing conservation activities.

NRCS should strike the new language cited above and provide for payments based on the language of the statute, which is reflected in §1470.24(4). To clarify the rules, we suggest the language in that subsection be revised to say: "(4) NRCS will base the annual payment rates for existing and additional activities, to the maximum extent practicable, on the following factors:…"

The new language (§1470.24(a)(1)) also describes an annual payment "for the additional conservation activities based on the complexity and extent of the individual activities *completed by the participant during the previous fiscal year*. Additional activities implemented may vary from year to year, so the total annual payment may fluctuate." The new rule also eliminates language designed to promote contracts with level or nearly-level payments over the 5 years. Taken together, the language could imply that a participant's new activity payment for a single year could be based only or substantially on the new activities completed the previous year, and that a participant might only be eligible for such payments in the year after they complete a new activity.

That approach seems to be reflected in the language of the following subsection (2), which appears to say a participant might not receive an annual payment for a land use unless they had installed at least one additional conservation activity on that land use the previous year. If so, then that approach ignores the statutory language that payments for new activities would be based on, among other things, management and maintenance costs, foregone income, and expected conservation benefits. Once a new (or existing) conservation activity is in place, annual payments for future years should reflect at least those costs, foregone income, and conservation benefits for the remaining duration of the contract. If the NRCS intent is otherwise, then we strongly oppose it. The new language should be removed from the rule.

Payment for ongoing activities (Sec. 1470.24((f)(4)). Under the payment section subsection on non-compensatory matters, the rule states that NRCS will not provide a CSP payment for "Conservation activities initiated or implemented prior to contract approval, unless NRCS granted a waiver prior to the participant starting the activity." This is hopefully an unintentional mistake, given that a primary purpose of CSP is to reward farmers and ranchers for continuing *ongoing* conservation activities. This provision should be fixed to make it clear it only applies to payments for new additional conservation activities under a CSP contract, not for the practices, enhancements, and activities in place at the time of application for which the participant earns payments. We suggest the language be revised to clarify this, as in: "New conservation activities initiated or implemented prior to contract approval, unless NRCS granted a waiver prior to the participant starting the activity."

Thank you for the opportunity to provide comments on the Interim Final Rule, and we would be glad to respond to questions about these comments.

Duane Hovorka, Agriculture Program Director