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January 13, 2020

U.S. Department of Agriculture  
Natural Resources Conservation Service  
5601 Sunnyside Avenue, Building 1-1112D  
Beltsville, MD 20705

**RE: Conservation Stewardship Program (CSP) Interim Rule – Docket Number: NRCS-2019-0020**

The National Cotton Council (NCC) is pleased to submit comments on the Interim Rule for the Conservation Stewardship Program (CSP).

The NCC is the central organization of the United States cotton industry. Its members include producers, ginners, cottonseed processors and merchandizers, merchants, cooperatives, warehouses and textile manufacturers. A majority of the industry is concentrated in 17 cotton-producing states stretching from California to Virginia. U.S. cotton producers cultivate between 10 and 14 million acres of cotton with production averaging 12 to 20 million 480-lb bales annually. The downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution and processing of cotton employ more than 125,000 workers and produce direct business revenue of more than \$21 billion. Annual cotton production is valued at more than \$5.5 billion at the farm gate, the point at which the producer markets the crop. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 280,000 workers with economic activity of almost \$75 billion. In addition to the cotton fiber, cottonseed products are used for livestock feed and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

The CSP is a program that assists in offsetting the costs of adopting and implementing new, state-of-the-art farm management technologies. Cotton growers have a long and successful commitment to conservation and innovation. Some of the greatest advances in recent decades with respect to integrated pest management, irrigation water efficiency, and precision nutrient management and application have been associated with cotton production. The CSP provides a means to enhance and improve upon this legacy.

The CSP has been utilized extensively across the Cotton Belt and we expect this utilization to continue. Furthermore, we would expect an increase in participation if there are corrections to certain aspects of the regulations that discourage participation by some larger farming operations.

**Participation by Larger Farming Operations**

The CSP is the largest, most ambitious conservation program offered by the Department of Agriculture. The CSP should be implemented in a size-neutral manner and should not discourage participation by commercial size farming operations. The CSP is a conservation program, not an income support program, and as such, the program should be designed to rank and evaluate applicants on the environmental and natural resource conservation merits. Growers of all sizes and descriptions are involved in cotton production and all should have equal opportunities to access the CSP. The unnecessary and counter-productive size restrictions included in the interim rule are not authorized by the underlying statute and should be omitted.

### **Broader Eligibility for Working Lands**

The rule clearly outlines that "the purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by (1) undertaking additional conservation activities; and (2) improving, maintaining and managing existing conservation activities." The NCC is supportive of that purpose as stated and believes that those objectives are well served by having the program operate with a national, continuous signup. We encourage the National Resources Conservation Service (NRCS) to continue to make timely announcements regarding enrollment closing dates. Setting priorities on specific resource concerns should be done through the State Technical Committees and at the local level through close coordination with the producers and landowners that the program is targeted to serve. Stated simply, this is a working lands program, and program rules, application rankings, and enhancement activities should all be targeted to the conservation needs of working agricultural lands and their operators on a local basis.

### **Enhancements and Ranking**

The backbone of the CSP is the basket of activity enhancements that are offered throughout the country and the extent to which those enhancements match the conservation needs of farmers and ranchers. The NCC would like to work closely with the NRCS on ways to further define and refine the enhancement activities to ensure that they fully meet the needs of cotton growers. Enhancements should be flexible enough to be adapted to the unique ecosystems and sub-ecosystems that occur throughout the Cotton Belt. Conservation planning and implementation is a continuous process of making improvements to achieve the objectives of reduced soil erosion, improved water quantity and quality, improved air quality, and improved habitat. The enhancements should reflect that commitment to flexibility and continuous improvement and should allow for reasonable adaptation and modification during the life of the contract. The variety of enhancements offered is especially important for growers who already have CSP contracts which are expiring because of the re-enrollment requirements to take on additional activities.

A perennial question regarding conservation programs is the ability to quantify improvements to the land. One of the tools that could be used in this effort is the use of individual farmer data sources. NRCS would be well served by offering a CSP enhancement that would encourage farmers to enroll in, and input their data to, sustainability programs such as the U.S. Cotton Trust Protocol. These programs have been or are being developed by most major commodity organizations, as well as other groups, and require producers to show continued improvement – their goals and objective are very similar to those of NRCS. Having this data would be a

powerful tool to show the American taxpayers and global consumers the great conservation work of America's farmers. From a fiduciary stand point, since these programs require continued improvement it makes sense for NRCS to offer this type of enhancement. NRCS programs are highly competitive; at a minimum the agency should offer a ranking increase to those producers who are participating in a recognized sustainability program as these producers are demonstrating their commitment to conserving the land and natural resources.

NRCS should approach enhancements in a very entrepreneurial manner. New enhancements should be added to the toolbox of offerings as new conservation technologies are developed. Enhancement activities can be used to accelerate the adoption of conservation technologies with positive environmental benefits that will address societal needs for greater soil conservation, water quality or quantity, air quality and habitat.

### **Payment Limitations**

The NCC encourages USDA to carefully reconsider its proposal as it pertains to payment limitations as the initial proposed interim rule will undermine the effectiveness of the CSP and is inconsistent with the statute.

The statute was very clear in limiting payment eligibility to a maximum of a \$200,000 per eligible entity over the five-year life of the bill. Section 1238G(g) of the Food Security Act of 1985, as amended provides:

*“(f) PAYMENT LIMITATIONS.—A person or legal entity may not receive, directly or indirectly, payments under the program that, in the aggregate, exceed \$200,000 for all contracts entered during Fiscal Years 2014 through 2018 excluding funding arrangements with federally recognized Indian tribes, regardless of the number of contracts entered into under the program by the person or entity.”*

Though it has been included in previous regulations the interim rule continues to create a limitation out of whole cloth and absent legislative authority. Section 1470.24(h) imposes a contract limit of \$200,000 per CSP contract regardless of the number of legal entities involved in the farming operation covered by the contract with the exception of joint operations which increases the contract limitation to \$400,000. If a contract limit is included in the Final Rule, we believe the exception for joint operations is imperative. However, we also believe this arbitrary limit is well outside the clear language of the statute and will negatively impact commercial-size farming operations.

The payment limit provided by Congress was directed at individual participants -- not contracts. Congress understood that the requirement that all parts of a farming operation be included in one contract could lead to large CSP contracts. The interim rule, however, ignores Congress' intent entirely in favor of a limitation designed and imposed exclusively by the agency. Not only is this limit without statutory authority, its logic runs contrary to the purposes of the CSP. Commercial-size operations, often consisting of multiple producers, will often maximize conservation benefits due to economies of scale, but those operations are hampered by this limit. This provision imposes a double limit on commercial-size operations unintended by Congress. The

NCC strongly opposes the imposition of a \$200,000 per contract limit and urges that it be removed from the regulation.

It is important to consider the long-term implication of the agency's decision to create program provisions that run contrary to clear statutory language. The agency is asserting in this interim rule that it can create its own set of payment limitations in each regulation it issues. The agency is effectively writing its own program with provisions that are contrary to those enacted by Congress.

### **Eligibility**

Many long-standing lease arrangements on farms are yearly or verbal leases but are regularly renewed. We appreciate the NRCS view of effective control of the land and removing the FSA Operator of Record barrier. If it can be demonstrated that the applicant has control at the time the contract is entered into, the issue of future control can be dealt with in other ways. For example, the regulations already provide for damages and refunds if the contract terms are not carried out for the life of the CSP contract. They also provide for transferring the contractual obligations to a new producer. NRCS has previously provided appropriate flexibility regarding a determination of control during implementation of the CSP. The provisions on successors in interest to the contracts provide better protection to the taxpayer interests than an overly stringent approach to determination of control of the land for the life of the contract.

### **Renewals**

First and foremost, given the long-term nature of the conservation enhancements, renewal of contracts will be highly desirable for both taxpayers and producers. While the interim rule and the statute allow for the renewal of a contract in the first half of the fifth year of the contract period due to the retroactive payment nature of the contract, renewal offers should be made in year four of a contract. Again, it is important for NRCS to offer a wide variety of enhancements as producers who renew CSP contracts are required to adopt new activities.

### **Summary**

The National Cotton Council appreciates the opportunity to comment on the Conservation Stewardship Program interim rule. The industry intends to continue working closely with NRCS on this important program and stands ready to engage further in any ways necessary and helpful.

Sincerely,

A handwritten signature in black ink that reads "Gary M. Adams". The signature is written in a cursive, flowing style.

Gary Adams  
President & CEO  
National Cotton Council