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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Conservation Security Program; Primary Purpose Determination To Exclude Program Payments From Gross Income Under Section 126 of the Internal Revenue Code

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that existing practice, new practice, and enhancement activity payments made to producers under the Conservation Security Program (CSP), authorized under the provision of Title II, Subtitle A, Section 2001 of the Farm Security and Rural Investment Act of 2002 (Pub. Law 107-171), are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, and providing a habitat for wildlife. This determination is in accordance with Section 126 of the Internal Revenue Code of 1954, as amended. Subject to a finding by the Secretary of the Treasury that the program is a small watershed program administered by the Secretary of Agriculture substantially similar to the type of programs described in 26 U.S.C. 126(a)(1) through (8), this determination permits recipients to exclude from gross income, for Federal income tax purposes, all or part of the existing practice, new practice, and enhancement activity cost-share payments made under said program to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Program Manager, Conservation Security Program, Natural Resources Conservation Service, USDA, Box 2890, Washington, DC 20013; (202) 720-3524.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 126, provides that part or all of certain payments made to persons under certain

small watershed programs administered by the Secretary of Agriculture, which are determined by the Secretary of the Treasury to be substantially similar to the type of programs described in 26 U.S.C. 126(a)(1) and (8), may be excluded from the recipient's gross income for Federal income tax purposes if certain determinations are made. One such determination is made by the Secretary of Agriculture that program payments are made "primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." To make such a "primary purpose" determination, the Secretary evaluates conservation program payments based on criteria set forth at 7 CFR Part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine, during individual audits, that payments made under the conservation program do not substantially increase the annual income derived from the property benefited by the payments.

CSP supports ongoing conservation stewardship of agricultural lands by providing assistance to producers to maintain and enhance natural resources. CSP will help producers maintain conservation stewardship and implement additional conservation practices that provide added environmental enhancement.

Under CSP program, the Secretary is authorized to make payments to the participant for the Federal share in accordance with subsection (C)ii, for not more than 75 percent (or in the case of a beginning farmer or rancher, 90 percent) of the average county costs of practices for the 2001 crop year that are included in the conservation security contract, as determined by the Secretary, including the costs of (I) the adoption of new management, vegetative, and land-based structural practices; (II) the maintenance of existing land management and vegetative practices; and (III) the maintenance of existing land-based structural practices that are approved by the Secretary but not already covered by a Federal or State maintenance requirement.

In implementing the program, the Natural Resources Conservation Service, on behalf of the Commodity Credit

Corporation (CCC), will allocate resources locally, as appropriate for the agriculture operation, to address significant resource concerns, meet the appropriate nondegradation standard, and to implement or maintain vegetative, active land management, and structural conservation practices included in the plan. Participants will enter into cost share contracts with the CCC for 5 to 10 years, under which the CCC and the participants will share the cost of installing new conservation practices and activities at a Federal rate not to exceed 75 percent or as a flat rate, as appropriate.

Having carefully examined the authorizing legislation, and planned operating procedures for CSP, using the criteria set forth at 7 CFR Part 14, we concluded that the payments for implementing approved contract practices under this program are made primarily for the purpose of conserving soil and water resources, protecting and restoring the environment, and providing a habitat for wildlife.

Determination: As provided by Section 126(b) of the Internal Revenue Code, the authorizing legislation, and planned operating procedures regarding CSP have been examined in accordance with criteria set out at 7 CFR Part 14. Based on this examination, we determined that those payments made for planning, installing, and maintaining approved practices under this program are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment.

Subject to a finding by the Secretary of the Treasury that the program is a small watershed program administered by the Secretary of Agriculture substantially similar to the type of programs described in 26 U.S.C. 126(a)(1) through (8), this determination permits recipients to exclude from gross income, for Federal income tax purposes, all or part of the existing practice, new practice, and enhancement activity payments under the extent allowed by the Internal Revenue Service.

Signed in Washington, DC on June 14, 2005

Mike Johanns,

Secretary of Agriculture.

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