

PETITION FOR RULEMAKING TO THE U.S. DEPARTMENT OF AGRICULTURE

PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT,

5 U.S.C. § 553(e), &

U.S. DEPARTMENT OF AGRICULTURE REGULATION, 7 C.F.R. § 1.28,

**FOR PROMULGATION OF A RULEMAKING FOR THE PARTNERSHIPS FOR
CLIMATE-SMART COMMODITIES PROGRAM**

July 10, 2024

SUBMITTED BY:

**THE CENTER FOR BIOLOGICAL DIVERSITY, SILVIA SECCHI, AND THE
INSTITUTE FOR AGRICULTURE AND TRADE POLICY**



NOTICE OF PETITION FOR RULEMAKING

Via Electronic Mail and Certified Mail/Return Receipt Requested (with Literature Cited)

July 10, 2024

Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250
Email: agsec@usda.gov

Re: Petition for Rulemaking Related to USDA's Partnerships for Climate-Smart Commodities Program

Dear Secretary Vilsack,

Pursuant to the First Amendment of the U.S. Constitution,¹ 5 U.S.C. § 553(e),² and 7 C.F.R. § 1.28,³ the Center for Biological Diversity, Silvia Secchi, and the Institute for Agriculture and Trade Policy (together Petitioners) hereby submit this petition for Partnerships for Climate-Smart Commodities rules and regulations.

Petitioners request that the U.S. Department of Agriculture (USDA) promptly, or within six months, initiate a rulemaking process to: 1) define what data must be collected and reported on “climate-smart” projects financed under the Partnerships for Climate-Smart Commodities program (Partnerships), describe how data collection and reporting obligations have changed since the program was developed in February 2022, and request comments from the public on what data should be collected and made publicly available as a term of receiving funding through the program; and 2) create regulatory methodology to be used by USDA in selecting “climate-smart” projects under the program and determining their effectiveness over the short and long

¹ U.S. CONST. Amend. I; *see also United Mine Workers v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 (1967) (“[T]he right[] to . . . petition for a redress [of] grievances [is] among the most precious of the liberties safeguarded by the Bill of Rights.”).

² 5 U.S.C. § 553(e) (“Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”).

³ 7 C.F.R. § 1.28 (“Petitions by interested persons in accordance with 5 U.S.C. § 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.”).

terms in reducing agricultural emissions.⁴ To inform this rulemaking process, Petitioners further request that USDA generate as a part of the administrative record a progress report detailing climate-smart funding to date, analyzing best practices and learnings emerging from the program, and explaining how the program is meeting USDA's expressed goals, as further described in this petition for rulemaking. This rulemaking can be developed under the authority of the Commodity Credit Corporation Charter Act of 1933, 15 U.S.C. 714 Section 4(d).

Petitioners are "interested person[s]" under 5 U.S.C. § 553(e) (APA requirements) and 7 C.F.R. § 1.28 (USDA requirements) and seek issuance and amendment of certain rules to make them consistent with American values, science, and with all relevant legal authorities and policies.⁵

Thank you for your critical work to confront the climate chaos that threatens America's farmers, public safety, food security, and wildlife; we hope to be partners in achieving that goal. Please direct any questions or other communications to Benjamin Rankin at brankin@biologicaldiversity.org. We look forward to your timely response.

Respectfully submitted,

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On behalf of the Center and the following co-petitioners:

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⁴ This should be in a publicly available and understandable format. *See, e.g.*, USDA Local and Regional Food Systems Resource Guide (December 2023), <https://www.rd.usda.gov/sites/default/files/LocalandRegionalFoodSystemResourceGuide.pdf>.

⁵ Under 5 U.S.C. § 553(e), "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." Petitioners are "interested person[s]" under 5 U.S.C. § 551(2), which defines "person" as "an individual, partnership, corporation, association, or public or private organization other than an agency." 7 C.F.R. § 1.28 states: "Petitions by interested persons in accordance with 5 U.S.C. § 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule."

PETITION FOR RULEMAKING

I. STATEMENT OF ACTION REQUESTED

Recently announced investments by the U.S. Department of Agriculture (USDA) in climate-smart agricultural practices through the farm bill, the Inflation Reduction Act, and the Commodity Credit Corporation Charter Act have the potential to meaningfully reduce agricultural emissions at a crucial time in the climate crisis, but only if they are properly administered to improve climate resilience and meet greenhouse gas reduction goals.⁶

Given the significance of the Partnerships for Climate-Smart Commodities program (Partnerships) at a time when successful climate solutions with demonstrable outcomes must be quickly proven and scaled, USDA must do more to confirm a return on its investment. This is especially urgent due to recent news that USDA is considering a reduction in climate-smart data collection and reporting requirements in the coming months.⁷

To that end, the Center for Biological Diversity, Silvia Secchi, and the Institute for Agriculture and Trade Policy (together Petitioners) respectfully petition USDA — pursuant to the First Amendment,⁸ the Administrative Procedure Act,⁹ and 7 C.F.R. § 1.28¹⁰ — to promptly, or within six months, initiate a rulemaking process to:

1. Define what data must be collected and reported on “climate-smart” projects financed under the Partnerships for Climate-Smart Commodities program, describe how data collection and reporting obligations have changed since the program was developed in February 2022, and request comments from the public on what data should be collected and made publicly available as a term of receiving funding through the program; and

⁶ See, e.g., USDA NRCS, *USDA Makes \$1.5 Billion Available to Help Farmers Advance Conservation and Climate-Smart Agriculture as Part of President Biden’s Investing in America Agenda* (Apr. 3, 2024), <https://www.nrcs.usda.gov/news/usda-makes-15-billion-available-to-help-farmers-advance-conservation-and-climate-smart>.

⁷ Philip Brasher, *USDA to scale back climate project demands in bid to enroll farmers*, *Agri-Pulse* (Mar. 06, 2024), <https://www.agri-pulse.com/articles/20752-usda-to-scale-back-climate-project-demands-in-bid-to-enroll-farmers>.

⁸ U.S. Const. Amend. I; see also *United Mine Workers v. Ill. State Bar Assn*, 389 U.S. 217 (1967) (The right to “petition for a redress [of] grievances [is] among the most precious of the liberties safeguarded by the Bill of Rights.”).

⁹ See 5 U.S.C. § 553(e).

¹⁰ 7 C.F.R. § 1.28 (“Petitions by interested persons in accordance with 5 U.S.C. § 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.”).

2. Create regulatory methodology to be used by USDA in selecting “climate-smart” projects under the program and determining their effectiveness over the short and long terms in reducing agricultural emissions.¹¹

To inform this rulemaking process, Petitioners further request for USDA to generate as a part of the administrative record a progress report detailing climate-smart funding to date, analyzing best practices and learnings emerging from the program, and explaining how the program is meeting USDA’s expressed goals, as further described in this petition for rulemaking. This rulemaking can be developed under the authority of the Commodity Credit Corporation Charter Act of 1933, 15 U.S.C. 714 Section 4(d).

Petitioners propose the following regulatory language for consideration in the requested rulemaking:

In administering the Partnerships for Climate-Smart Commodities program, USDA will:

- (a) Define what data must be collected and reported by projects financed under the program, disclose any changes to data collection and reporting obligations under the program, and request comments from the public regarding data collection and reporting requirements under the program.*
- (b) Establish regulatory methodology to be used in selecting climate-smart projects for funding under the program and determining their effectiveness over the short and long terms in reducing agricultural emissions.*

This language could be appropriately included in 7 C.F.R. Chapter XIV (Commodity Credit Corporation, Department of Agriculture), Subchapter B (Loans, Purchases, and Other Operations) or elsewhere in the Code of Federal Regulations.

II. DESCRIPTION OF PETITIONERS

The Center for Biological Diversity (the Center) is a nonprofit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has more than 1.7 million members and online activists committed to the protection and restoration of endangered species and wild places. For 26 years, the Center has worked to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people and animals from threats such as anthropogenic climate change.

Silvia Secchi is a Professor in the Department of Geographical and Sustainability Sciences at the University of Iowa. Secchi is a natural resource economist by training, and her work typically combines methodologies from the social sciences, the natural sciences and engineering. She has

¹¹ This should be in a publicly available and understandable format, *e.g.*, USDA Local and Regional Food Systems Resource Guide, *supra* note 4.

published on the environmental impacts of agricultural land use change in the Corn Belt, particularly water quality and carbon, and the interplay between agricultural, conservation and energy policies in the region. She has also researched farmers' attitudes towards conservation, multifunctional floodplain management and targeted reconnection, invasive species management, and mitigation and adaptation to climate change in the agricultural sector. Secchi is a core faculty member in the campus-wide Water Sustainability Initiative. She is also interested in the mentoring and training of graduate students, fostering the creation of new knowledge in interdisciplinary teams, and promoting effective science and policy communication, both internally within teams, and externally when engaging with stakeholders, funders, and society at large.

The Institute for Agriculture and Trade Policy (IATP) is a 38-year-old, Minnesota-based nonprofit that works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm, and trade systems. IATP envisions agriculture, trade and food systems that are good for people, farmers and food system workers, ecosystems, and social justice globally. IATP is working toward a just transition for our food and farm system that reduces pollution and greenhouse gas emissions, builds climate resilience and food security, ensures fair markets and treatment for farmers and workers, and allows rural communities to thrive.

III. BASIS FOR REQUESTED ACTION

A. Data Collection, Transparency, and Science-Based Metrics are Essential for Meeting the Objectives of the Partnerships for Climate-Smart Commodities Program

Agriculture produces more than one-tenth of U.S. greenhouse gas emissions and is the largest source of U.S. methane and nitrous oxide emissions.¹² According to the most recent Inventory of U.S. Greenhouse Gas Emissions and Sinks, published by the U.S. Environmental Protection Agency in April 2024, agricultural emissions have grown 7.7% since 1990, primarily due to enteric fermentation and manure management from increasing herd sizes.¹³ Indeed, although methane emissions nationally have decreased by 19% since 1990, methane emissions from manure management alone have *increased* by 65.3% over that same period.¹⁴ Year-to-year fluctuations in these categories are attributed to shifts in farmed animal populations.¹⁵ Both methane and nitrous oxide have a significantly higher warming potential compared to carbon dioxide over the first 20 years (more than 80 and 270 times, respectively), so reducing these

¹² USDA ERS, Agriculture accounted for an estimated 10.6 percent of U.S. greenhouse gas emissions in 2021 (updated Feb. 27, 2024), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=108623>; Environmental Protection Agency, Overview of Greenhouse Gases (updated Apr. 11, 2024), <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (“The Agriculture sector is the largest source of CH₄ emissions in the United States.”).

¹³ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2022 (2024), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks>.

¹⁴ *Id.*; EPA, Data Highlights: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022, 430-F-24-003, at 3 (2024), <https://www.epa.gov/system/files/documents/2024-04/data-highlights-1990-2022.pdf>.

¹⁵ *Id.*

emissions is the fastest opportunity we have to immediately slow the rate of global warming and avoid the worst impacts of climate change.¹⁶

This is important because, in addition to the significant economic, public health, and ecological problems resulting from climate change, farmers are especially vulnerable to its effects, which are already degrading soils, altering precipitation patterns, increasing agricultural pests and diseases, reducing yields, and disrupting growing seasons.¹⁷ “Heat-related stress and death are significantly greater for farmworkers than for all US civilian workers, and the number of unsafe working days is projected to double by midcentury.”¹⁸ Recognizing the societal harm of continuing to ignore the increasing effects of climate change, the Biden Administration has properly identified that “we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth.”¹⁹ It has further established the government’s policy to “organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy.”²⁰ Farmers in particular are recognized for their “important role . . . in combating the climate crisis and reducing greenhouse gas emissions, [including] by sequestering carbon in soils, grasses, trees, and other vegetation and sourcing sustainable bioproducts and fuels.”²¹

Even further, in establishing climate change mitigation as a priority, the Administration made clear that its climate response must be guided by a scientific process of knowledge-seeking: “We must listen to science — and act. . . . The Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy.”²² This need was specifically expressed to the Secretary of Agriculture, who was instructed to explore climate-smart practices that “result in *additional, measurable, and verifiable* carbon reductions and sequestration.”²³

¹⁶ Piers Forster et al., *The Earth’s Energy Budget, Climate Feedbacks, and Climate Sensitivity* at 1017, in CLIMATE CHANGE 2021: THE PHYSICAL SCI. BASIS. CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REP. OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (Valerie Masson-Delmotte et al. ed. 2021).

¹⁷ USDA ARS, Fifth National Climate Assessment, Ch. 11. Agriculture, Food Systems, and Rural Communities at 11-4 (2023), <https://nca2023.globalchange.gov/chapter/11/>.

¹⁸ *Id.* at 11-16.

¹⁹ Exec. Order No. 14,008, 86 Fed. Reg. 7,619, 7,622 (Feb. 1, 2021).

²⁰ *Id.*

²¹ *Id.* at 7,626.

²² *Id.* at 7,622; *see also* Exec. Order 13,990, 86 Fed. Reg. 7,037 (Jan. 20, 2021) (In protecting the environment and advancing environmental justice, “the Federal Government must be guided by the best science.”).

²³ Exec. Order No. 14,008 at 7,627 (emphasis added).

In response, Secretary Vilsack declared USDA’s intention to confront worsening climate chaos by “building climate resilience, mitigating emissions, and conserving our natural resources.”²⁴ USDA also recognized the dire need for data to enable the quantification of climate benefits:

Improved soil carbon data is critical to help refine quantification tools and models for estimating and verifying benefits of [Climate-Smart Agriculture and Forestry (CSAF)] practices. As part of this effort, USDA will increase data collection and field testing of carbon sequestration benefits associated with CSAF practices to help calibrate and/or validate methods and tools used to quantify GHG benefits for CSAF practices.²⁵

The data-driven objectives of the Partnerships for Climate-Smart Commodities program and the importance of quantifying the benefits of projects funded through the program were again reaffirmed by USDA in its recently released Climate Adaptation Plan. In response to a Government Accountability Office recommendation that USDA establish standards for climate-resilient agriculture, the agency stated:

The 141 projects funded through [Partnerships] are pilots, meant to inform approaches related to implementing climate-smart practices, measuring their climate benefits, and creating markets for the associated commodities. Many of the approaches and practices that are being tested by the Partnerships projects have adaptation and resilience co-benefits. It will be important to learn from these approaches before developing a “climate-smart” standard, which could include both mitigation and adaptation benefits.²⁶

Inadequate data collection is also recognized as an environmental justice issue. Since “gaps in environmental and human health data . . . conceal . . . harms from public view,” each agency, including USDA, is directed to:

take appropriate steps . . . to promote the development of research and data related to environmental justice, including enhancing the collection of data, supporting the creation of tools to improve the consideration of environmental justice in decision-making, providing analyses of cumulative impacts and risks, and promoting science needed to inform decisions that advance environmental justice.²⁷

²⁴ USDA, Climate-Smart Agriculture and Forestry Strategy: 90-Day Progress Report 1 (May 2021), <https://www.usda.gov/sites/default/files/documents/climate-smart-ag-forestry-strategy-90-day-progress-report.pdf>.

²⁵ *Id.* at 4; *see also* USDA, Action Plan for Climate Adaptation and Resilience 9 (Aug. 2021), <https://www.usda.gov/sites/default/files/documents/CombinedUSDAandAgencyClimateAdaptationPlans2022.pdf> (“[T]here is a need to improve field-level data collection related to climate change impacts to better understand local impacts, support planning, and continue to refine model estimates.”).

²⁶ USDA, Climate Adaptation Plan 2024-2027 at 76 (May 2024), <https://www.sustainability.gov/pdfs/usda-2024-cap.pdf>.

²⁷ Exec. Order 14,096, 88 Fed. Reg. 25,251, 25,258 (Apr. 26, 2023).

Finally, since its inception in 2022, a key purpose of the program — through which USDA has invested more than \$3 billion — has been this essential information-gathering function: to “measure/quantify, monitor and verify the carbon and greenhouse gas (GHG) benefits associated with” climate-smart practices.²⁸

The information being collected by producers has irreplaceable value to the public, and there is a reasonable expectation that it be publicly available given the significant amount of federal dollars going into this program. USDA describes Partnerships as a tool “to learn from different approaches and to support innovation,” saying that it “will learn from these pilots what works and what doesn’t.”²⁹ It has promised that “[p]roject findings – including data – will be shared publicly,” and that it “will summarize and publish . . . consolidated data from required project reporting.”³⁰ So far, these project findings have not been shared with the public. It is essential that producers, scientists, policymakers, and stakeholders like the public have access to the results of USDA-funded climate-smart projects so that empirically supported climate solutions can be identified and adopted. To do so requires USDA to collect adequate, comprehensive data about the projects it is funding to be able to achieve the goals of the program and generate reproducible science-based metrics going forward.

B. USDA’s Plans to Limit Data Collection and Transparency Around the Partnerships for Climate-Smart Commodities Program Are Misguided

Despite the importance of achieving verifiable climate results to and from the agriculture sector, we were troubled to read recent reports that USDA is considering reducing the data collected under Partnerships.³¹ In March 2024, Undersecretary Robert Bonnie announced that USDA is considering cutting back on the data collected from program participants through a “common friendly amendment” to the existing partnership agreements.³² “Our expectations are that we’ll have a conversation with the projects in the next couple of months, and then we’ll implement that sort of pullback over the next six months,” said Bonnie.³³ This is especially concerning given the number of funded projects that rely on practices associated with negative

²⁸ USDA Press, *USDA to Invest \$1 Billion in Climate Smart Commodities, Expanding Markets, Strengthening Rural America* (Feb. 7, 2022), <https://www.fsa.usda.gov/news-room/news-releases/2022/usda-to-invest-1-billion-in-climate-smart-commodities-expanding-markets-strengthening-rural-america>.

²⁹ USDA, *Partnerships for Climate-Smart Commodities FAQs* (updated Jan. 30, 2023), <https://www.usda.gov/climate-solutions/climate-smart-commodities/faqs>.

³⁰ *Id.*

³¹ Brasher, *USDA to scale back climate project demands in bid to enroll farmers*, *supra* note 7.

³² *Id.*

³³ *Id.*

environmental consequences, and the lack of publicly available data to adequately assess these impacts.³⁴

A successful transition to a climate-smart agricultural system will depend on our collective ability to discover which conservation practices are most effective at reducing greenhouse gas emissions and implement those practices at scale. This cannot happen if USDA takes the misguided step of reducing the amount of useful data it is collecting on the climate-smart projects it is funding.

Given existing questions about the effectiveness of projects and lack of transparency around funding decisions,³⁵ changing data reporting requirements in a way that would cause USDA to learn less about these projects would be counterproductive in trying to address worsening climate change or advance climate-smart goals. Even further, taking such an approach to reduce data reporting requirements could reduce the effectiveness of future work at USDA and ultimately exacerbate climate impacts *on farmers*, the public, and wildlife. Data collection and reporting are also critical to promoting best practices and ensuring that funds are reaching marginalized farmers using sustainable agricultural practices.

Even further, farmers have indicated that the existing data reporting requirements are not burdensome. “It’s not hard – we all have . . . the data,” one farmer told an *Agri-Pulse* reporter, adding that “[a]g kind of gets a bad rap, but we have the ability thanks to the program . . . to show what we’re doing, to endorse what some of the options are” for combatting climate change.³⁶

Therefore, while we agree that partners should not have to collect and submit unnecessary data, it is essential that enough of the right data are collected to determine the effectiveness of climate-smart practices at reducing and sequestering carbon emissions, achieving program goals, and generating reproducible science-based metrics going forward. A public comment period would help USDA weigh what kinds of data are necessary and reasonable, but until such a public comment period is conducted, USDA must not arbitrarily constrict the quality and amount of data it collects about funded climate-smart projects.

To the extent that some producers are experiencing barriers to data collection and reporting, USDA should provide them with resources and technical assistance. Because small and mid-sized producers participating in the program have fewer resources than large producers, improving technical support would increase the equity and accessibility of the partnerships.

³⁴ Environmental Working Group, Many newly labeled USDA climate-smart conservation practices lack climate benefits (Feb. 28, 2024), <https://www.ewg.org/research/many-newly-labeled-usda-climate-smart-conservation-practices-lack-climate-benefits>.

³⁵ *Id.*; see also For the purpose of receiving testimony from The Honorable Thomas J. Vilsack, Secretary, U.S. Department of Agriculture: Hearing before the House Comm. on Agriculture, 118th Cong. 115 (2023).

³⁶ Brasher, USDA to scale back climate project demands in bid to enroll farmers, *supra* note 7.

Supporting farmers who lack the tools or knowledge to meet data reporting requirements can help empower them to implement best practices, measure and monitor their success, improve climate resilience, and increase access to funding and marketing opportunities, particularly for marginalized producers.

In its 2023 report on enhancing climate resilience of agricultural producers, GAO noted that developing standards for agricultural resilience would require significant stakeholder engagement, to which USDA agreed “that coordination with stakeholders would be essential.”³⁷ In addressing the climate resilience of our food system, the definition of “stakeholder” extends far beyond producers already receiving climate-smart funding to include producers who could learn from the outcomes of the pilot projects, producers implementing improved practices without USDA funding, frontline and fenceline communities affected by agricultural production, agricultural and climate scientists, public health and environmental experts, and broader public participation.

We therefore respectfully request that USDA move forward with a rulemaking process to guide its decisionmaking around data collection and reporting for this significant program before finalizing any changes to the Partnerships data reporting requirements. Specifically, we request that USDA use this rulemaking to define what data must be collected and reported as part of the requirements for “climate-smart” projects financed through the program, describe how data collection and reporting obligations have changed since the program was developed in February 2022, and request comments from the public on what data should be collected and made publicly available as a term of receiving funding through the program. Doing so will improve governmental transparency, ensure consistency of data collection and reporting going forward, and allow scientists and other would-be users of the data the opportunity to inform USDA’s methodology and ensure that sufficient data are collected to produce meaningful greenhouse gas reductions.

C. Climate-Smart Practices Must Be Clearly Defined to Ensure Program Goals Are Achieved

For the Partnerships for Climate-Smart Commodities program, USDA defines “a climate-smart commodity . . . as an agricultural commodity that is produced using farming, ranching or forestry practices that reduce greenhouse gas emissions or sequester carbon.”³⁸ Nearly 200 different conservation practices are being funded under the program.³⁹ USDA also maintains a list of numerous “climate-smart” conservation practices eligible for funding through the Environmental Quality Improvement Program (EQIP) and Conservation Stewardship Program (CSP) that

³⁷ USDA, Climate Adaptation Plan 2024-2027 at 76, *supra* note 26.

³⁸ USDA, Partnerships for Climate-Smart Commodities, <https://www.usda.gov/climate-solutions/climate-smart-commodities> (last accessed April 9, 2024).

³⁹ USDA, Partnerships for Climate-Smart Commodities Projects (updated July 3, 2024), https://publicdashboards.dl.usda.gov/t/FPAC_PUB/views/PartnershipsForClimate-SmartCommodities/Overview.

include mulching, pasture and hay planting, and herbaceous weed treatment.⁴⁰ These broad definitions and generalized approaches fail to confirm that key factors will be studied and reported on in determining the effectiveness of practices, including: whether a particular project reduces an operation’s overall greenhouse gas emissions; how long sequestered carbon will stay in the soil; any land use changes embedded in the project or operation; if a practice is sustainable, scalable, and reproducible; and whether there are adverse consequences for water, soil, air, or biodiversity.

Last November, USDA “provisionally” added over a dozen practices to this list, including waste storage facilities and biogas covers.⁴¹ In February, several members of Congress, led by Sen. Cory Booker and Rep. Alma Adams, opposed many of these additions for disproportionately benefitting and further entrenching large-scale and unsustainable industrial operations.⁴² An Environmental Working Group report concurred that these additions encourage further animal concentration and are thus “almost certainly not climate-smart.”⁴³ Undersecretary Bonnie reaffirmed USDA’s expansive interpretation of climate-smart parameters in March, saying that the “requirement that [a project] be climate-smart is not particularly narrow.”⁴⁴

USDA’s future investments in climate-smart agriculture — including \$1.5 billion in Regional Conservation Partnership Program (RCPP) climate-smart project proposals it is seeking by July 2 — should be informed by a fully developed perspective on which practices are worth investing our shared climate future in.⁴⁵ We therefore further request that, before expanding the practices eligible for climate-smart funding under any program, including “provisionally” listed practices, USDA first undertake a rulemaking process to create a regulatory methodology to be used in selecting “climate-smart” projects under the Partnerships program and determining their effectiveness over the short and long terms in reducing agricultural emissions and building climate resilience.⁴⁶

⁴⁰ USDA NRCS, Climate-Smart Agriculture and Forestry (CSAF) Mitigation Activities List for FY2024 (Nov. 2023), <https://www.nrcs.usda.gov/sites/default/files/2023-10/NRCS-CSAF-Mitigation-Activities-List.pdf>.

⁴¹ *Id.* at 6 (“Provisional activities and their associated enhancements are added under the premise that they may provide benefits, and a quantification methodology will be evaluated during the fiscal year. Practices may be removed from the mitigation practice list in a subsequent fiscal year if quantification is not possible.”).

⁴² Letter from Senator Cory Booker and Representative Alma Adams et al. to Secretary Thomas Vilsack, USDA, (Feb. 1, 2024), <https://www.booker.senate.gov/imo/media/doc/Letter%20to%20Vilsack%20Re%20Factory%20Farm%20Practices%20Eligibility%20for%20IRA%20Conservation%20Funding.pdf>.

⁴³ EWG, Many newly labeled USDA climate-smart conservation practices lack climate benefits, *supra* note 34.

⁴⁴ Garrett Downs and Meredith Lee Hill, USDA already using broad climate-smart definition amid Hill fight says Bonnie, *E&E News* (Mar. 14, 2024), <https://subscriber.politicopro.com/article/2024/03/bonnie-usda-already-using-broad-climate-smart-definition-amid-hill-fight-00147144>.

⁴⁵ USDA Makes \$1.5 Billion Available to Help Farmers, *supra* note 6.

⁴⁶ This should be in a publicly available and understandable format, *e.g.*, USDA Local and Regional Food Systems Resource Guide, *supra* note 4.

IV. ADDITIONAL QUESTIONS FOR USE BY USDA TO GUIDE THE REQUESTED RULEMAKING AND GENERATE A DEFENSIBLE ADMINISTRATIVE RECORD

To guide USDA's requested rulemaking process and generate a defensible administrative record for that rulemaking, Petitioners further request that the agency publish a detailed progress report on funded climate-smart projects that answers the following questions:

1. What scientific methodologies are used to determine whether projects applying for climate-smart funding through Partnerships for Climate-Smart Commodities qualify as climate-smart?
 - a. What were the specific criteria used to select projects and the scientific basis and studies used to define each criterion?
 - b. In making these determinations, how does USDA account for:
 - i. The scope and duration of the project?
 - ii. The number of conservation practices proposed for the project?
 - iii. The geographic location of the project, including the overall concentration of projects approved in a region?
 - iv. The magnitude of the project's climate benefits, including how global warming potentials of different greenhouse gases are accounted for?
 - v. Long-term results, e.g., soil carbon saturation, projected land-use change with growth, and ability to scale?
 - vi. The net climate impact of the entire operation (e.g., enteric fermentation, manure management, pesticide use, etc.) in addition to the impact of the specific funded project?
 - vii. Non-GHG environmental co-benefits in areas such as water quality, soil quality, localized air quality, and wildlife habitat?
 - c. What, if anything, distinguishes the practices considered climate-smart for the purposes of Partnerships for Climate-Smart Commodities and the Regional Conservation Partnership Program?
2. What amount of USDA's climate-smart funding through Partnerships is allocated to:
 - a. Recipients that are:
 - i. Small or mid-sized producers (GCFI of less than \$1,000,000)?
 - ii. Historically marginalized producers?
 - iii. Independent producers?
 - iv. Integrators?
 - v. Industry associations?
 - b. Projects that engage in the following practices:
 - i. Concentrated animal feeding operations (CAFOs)?
 - ii. The growing of commodity crops such as corn, soybeans, and sorghum?
 1. The growing of commodity crops for animal feed?
 2. The growing of commodity crops for biofuels?
 - iii. The growing of non-commodity crops for animal feed (i.e., forage crops)?

- iv. Biogas production?
 - v. Timber operations or forest products?
 - c. Implementing conservation practices?
 - d. Implementing conservation practices that have been identified by USDA as having specific benefits for wildlife, species diversity, or habitat?
 - e. Advertising and promoting climate-smart products?
 - f. Providing technical assistance and resources to help producers collect and report data?
- 3. What percentage of projects receiving climate-smart funding through Partnerships include funding allocated for:
 - a. Implementing conservation practices?
 - b. Implementing conservation practices that have been identified by USDA as having specific benefits for wildlife, species diversity, or habitat?
 - c. Advertising and promoting climate-smart products?
 - d. Data collection and reporting?
- 4. For animal feeding and grazing operations receiving climate-smart funding through PCSC:
 - a. How many projects are associated with CAFOs (including feedlots for finishing)?
 - b. How many and what proportion of animals are being kept in CAFOs?
 - c. What is the average herd size of each species?
 - d. Are animals grazing in sensitive habitats, riparian areas, or on public lands?
- 5. Has USDA conducted, or required recipients to conduct, for any of its Partnerships projects:
 - a. An environmental impact analysis?
 - b. An Endangered Species Act analysis?
- 6. To what extent are projects required to use independent monitoring to verify their results, and using what metrics?

V. CONCLUSION

Government investments in addressing agricultural emissions are a critical and often-overlooked aspect of the fight against climate change. USDA's efforts to rise to the challenge of this climate crisis are commendable, but its progress will be undermined if it fails to collect enough data to meaningfully inform climate-smart decisions in the future or to ensure that it does not expend resources on practices that have little or no benefit. It is imperative that agricultural stakeholders come together to develop and implement practices that will reduce the sector's significant greenhouse gas emissions and protect rural communities, food security, and wildlife from worsening climate chaos.

To ensure that USDA's future climate-smart funding decisions are informed by the perspectives of all stakeholders, we request that USDA engage in a public comment process before making changes to its programs' data collection and reporting or to the practices included in the climate-

smart portfolio. We further respectfully request an assessment of USDA's climate-smart programs that answers the questions we have outlined above.

Therefore, given USDA's stated plans to begin curtailing the Partnerships program's data reporting requirements over the coming months, we respectfully request that within six months USDA initiate a rulemaking process to: 1) define what data must be collected and reported on "climate-smart" projects financed through the Partnerships for Climate Smart Commodities program, describe how data collection and reporting obligations have changed since the program was developed in February 2022, and request comments from the public on what data should be collected and made publicly available as a term of receiving funding through the program; and 2) create regulatory methodology to be used by USDA in selecting "climate-smart" projects under the program and determining their effectiveness over the short and long terms in reducing agricultural emissions.⁴⁷ To inform this rulemaking process, Petitioners further request that the agency generate as a part of the administrative record a progress report detailing climate-smart funding to date, analyzing best practices and learnings emerging from the program, and explaining how the program is meeting USDA's expressed goals, as further described in this petition for rulemaking. We appreciate that, due to the number and variety of stakeholders involved in USDA's climate-smart programs, meeting these requests may involve multiple steps; to that end, we request that within 60 days USDA respond with a timeline explaining how it plans to achieve these objectives.

Copies of the materials supporting this Petition are available at this link: [LINK](#)

⁴⁷ *Id.*