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February 5, 2016

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue Southwest
Washington, DC 20250

Dear Mr. Secretary:

Thank you for your letter dated February 3, 2016. I appreciate your consideration of the bipartisan, bicameral request of more than one hundred of my colleagues and I that you use the authority granted to you in the Agricultural Act of 2014 (the Farm Bill) to designate cottonseed as an "other oilseed" for purposes of Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC).

Although your letter identifies several possible obstacles to the designation of cottonseed as an oilseed, I respectfully disagree with your conclusion and assure you that your authority to designate cottonseed as an "other oilseed" stands on firm legal ground.

You state that a designation is not authorized, as Congress expressly removed upland cotton from the definition of a covered commodity eligible for ARC or PLC and created the Stacked Income Protection Plan (STAX) for cotton.

Congress grants the Secretary authority—both specific and general. As Secretary, you have used this authority to great effect, including providing relief to dairy farmers within a year of the 2008 farm bill's passage. In 2008, despite the careful treatment of dairy under the 2008 farm bill which included a total revamping of the dairy price support program and a significant refocusing of the milk income loss contract program, Congress was unable to predict market conditions for dairy in 2009. Your timely exercise of the broad authority granted to you by Congress provided a remedy that mitigated dire economic consequences in dairy country, and your action was commendable.

In this case, Congress vested the Secretary with very specific authority to designate any oilseed as an "other oilseed." The statute plainly reads that "other oilseeds" are defined as "a

crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, **or any other oilseed designated by the Secretary**" (emphasis added). As you know well from your experience as Secretary, no amount of foresight or planning can determine the future, especially when it comes to agricultural markets. The whole point of a statute granting you the discretion to add "other oilseeds" is that Congress cannot anticipate every need that may arise between farm bill authorizations, periods that have ranged as long as seven years, and so we vest discretionary powers, sometimes specific and often general, in you to respond to needs that arise in a timely and effective manner.

It is true that upland cotton was removed from the definition of a covered commodity eligible for ARC or PLC. It is also true that "Congress specifically created the [STAX] program for cotton and a [one-year] Cotton Transition Assistance Program (CTAP)...for [upland] cotton." But upland cotton is not the same as cottonseed. Historically, the two have been treated separately in the context of farm policy as well as in common parlance, with upland cotton referring to lint, thus being defined as a widely cultivated American cotton plant (*Gossypium hirsutum*) having short-to-medium-staple fibers. Meanwhile, cottonseed is generally defined as the seed of cotton, used as a source of oil and meal. Further distinguishing the two is the fact that cottonseed may be derived from both upland cotton and extra-long staple cotton. This distinction was clear in CTAP, for example, where assistance was provided exclusively on cotton lint yields, completely excluding cottonseed.

Further, there is no evidence that Congress intended to do anything other than remove upland cotton lint from the definition of Covered Commodity during consideration of the Farm Bill. There were no discussions about inclusion or exclusion of cottonseed from the list of oilseeds. Congress does in fact clearly vest that authority with you. While the Secretary may have never before designated the seed of a commodity as an "other oilseed" when Congress had previously removed that seed's lint from the definition of Covered Commodity, that is because this precise situation has never arisen before. Nothing about the novelty of the situation nullifies your authority to address it.

As a practical matter, there is a very significant difference in the denial of upland cotton from eligibility under ARC and PLC and the allowance of cottonseed under the same. Had upland cotton been included under ARC and PLC coverage under the same general terms and conditions as producers of other commodities, upland cotton producers would have had a significant safety net in place. To the contrary, the benefits resulting from designating cottonseed as an oilseed are less clear and may very well be less meaningful than STAX might have proved had China and India not significantly distressed the global cotton market through their policies. So, a designation of cottonseed as an oilseed is by no stretch of the imagination an inclusion of upland cotton in ARC or PLC by another name. As such, a designation of cottonseed as an oilseed under the Farm Bill is not in conflict with the policy decision to exclude upland cotton from ARC or PLC. These are different products, in different markets, with different economic impacts.

You raise concerns about a conflict between generic base acres and cottonseed base under an “other oilseed” designation.

While you have communicated to me a number of other legal obstacles prior to your February 3 letter, this is the first time you have communicated concerns regarding a conflict between generic base acres and cottonseed base. Fortunately, your concerns are addressed in the Farm Bill. In regard to your concern that the designation of cottonseed as an “other oilseed” would result in farms with cotton production being awarded two types of base for the same planting history (i.e. generic base and cottonseed base), section 1112 of the Farm Bill provides for the adjustment of base acres where “[t]he producer has eligible oilseed acreage as the result of the Secretary designating additional oilseeds.” With respect to your concern that there is no other instance in which the same planting history would trigger eligibility for double the amount of base acres, section 1112 further provides that “the Secretary shall reduce the base acres for 1 or more covered commodities or generic base acres for the farm so that the sum of the base acres, including generic base acres...does not exceed the actual cropland acreage of the farm.” In short, there is no conflict between our request and generic base acres.

You contend that to treat cottonseed as an “other oilseed” would be contrary to certain interpretations made by the Department.

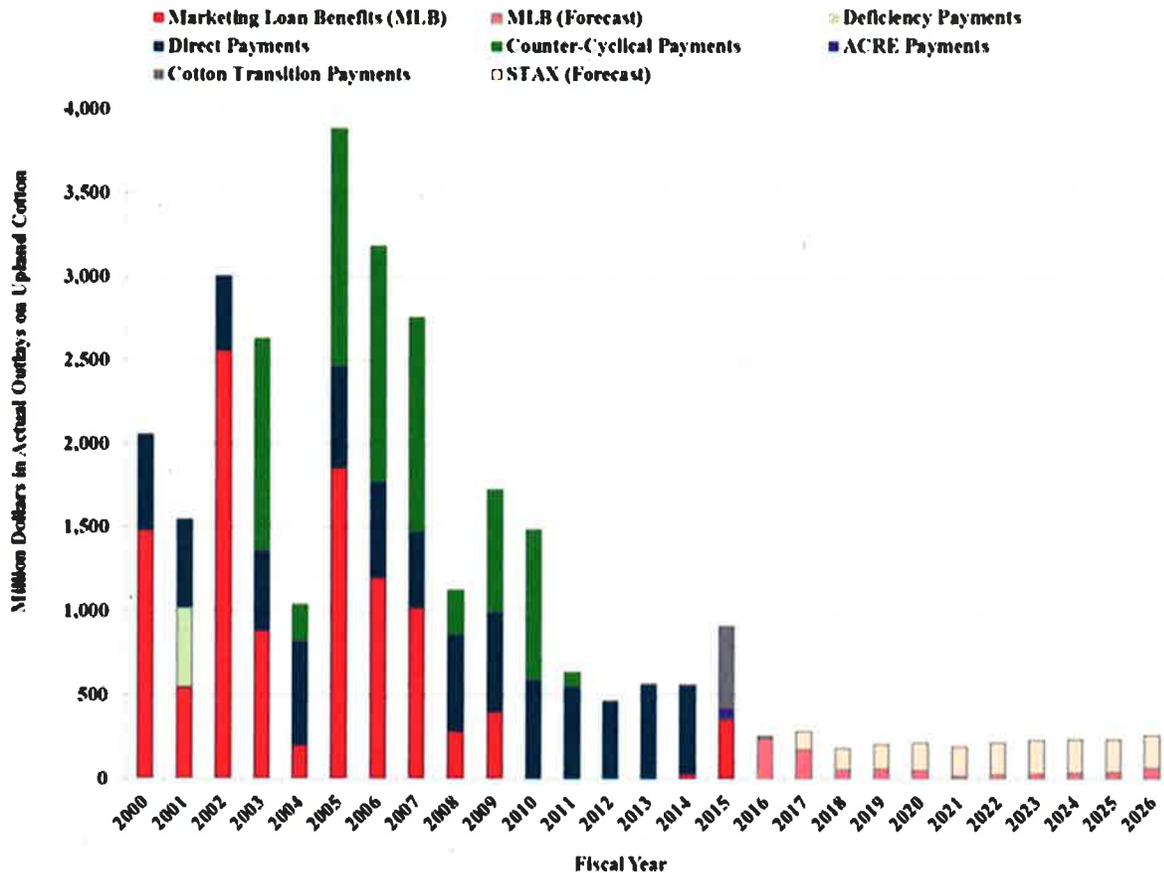
Specifically, you state that “USDA has already determined that cottonseed was not a crop independent from the crop of upland cotton” for the purposes of eligibility for STAX. It may be true that the Department has made this determination. However, this administrative action by the Department is not an express or even implicit expression of congressional intent that cottonseed should be included in the definition of upland cotton.

In any case, the administrative decision by the Risk Management Agency to cover cottonseed under STAX is a reversible one and, to the extent that this administrative decision is an impediment to designating cottonseed as an “other oilseed” by the Farm Service Agency (FSA) for Commodity Title purposes, I would urge that the decision be reversed. As I noted above, cottonseed and lint from upland cotton have always been treated differently and, so, there is plenty of precedent for restoring that distinction.

Beyond the legal analysis, your letter summarizes support available to cotton growers. In this regard, three things are worth noting. First, upland cotton is eligible for the limited benefits you list, alongside all other covered commodities. Second, a farmer cannot cash flow on crop insurance and loans alone, or at least not for long, but that is all your list grants upland cotton farmers. Finally, I would simply submit that if all covered commodities were confined to the benefits for upland cotton that you list in your letter, you would be faced with the need to address a national crisis that would extend far beyond the cotton belt, and you would have heard by now from 435 Members of Congress on the urgent need for you to act.

Moreover, while STAX may be available in 99 percent of cotton counties, as you point out, only 22 percent of the insured cotton acres in 2015 are actually insured under a STAX policy. In fact, the Congressional Budget Office (CBO) noted just last week that STAX outlays over the 2014-23 period are estimated to be 55 percent lower than estimated at passage of the Farm Bill. So, while STAX may be widely available, it is not being subscribed to because it is not designed to cover the peril of heavy subsidies and protectionist policies put in place by China, India, and other large players that are wreaking havoc in the world cotton market.

While you outline certain benefits, it is also worth noting that, going forward, support for cotton producers (including STAX) is projected to be 87 percent lower than support provided under the Farm Bill over the past 15 years, as highlighted in the figure below. Few could have anticipated the sheer magnitude of this drop.



In response to this situation, you have requested additional legal authority under the Commodity Credit Corporation (CCC) Charter Act. Unfortunately, the one-time ad hoc solution that you have in mind will not solve the underlying concern, whereas the designation

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of cottonseed as an “other oilseed” under the Farm Bill would better provide long-term stability and certainty.

Please know that I sincerely appreciate that you share my concern for the crisis in cotton country. However, it is important to underscore that concern without urgent and meaningful action will do little to mitigate the grave situation that is unfolding before us. Farmers and their lenders are facing the beginning of the 2016 planting season with increasing dread. You have the authority and the responsibility to act, and I respectfully renew my request for you to do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Michael Conaway". The signature is stylized and cursive, with a large loop at the end.

K. Michael Conaway
Chairman