



National Milk Producers Federation

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"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"

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October 29, 2009

Mr. Greg Johnson, Director
Financial Assistance Programs Division, Room 5237-S
Natural Resources Conservation Service
U.S. Department of Agriculture
Washington, DC 20250-2890

CSP2008@wdc.usda.gov

RE: Comments regarding the interim final rule implementing the 1985 Food Security Act's Conservation Stewardship Program (CSP) (Docket Number NRCS-IFR-09004).

Dear Mr. Johnson,

The National Milk Producers Federation (NMPF) is pleased to comment on the interim final rule implementing the 1985 Food Security Act's Conservation Stewardship Program (CSP), as created in Section 2301 of the Food, Conservation and Energy Act of 2008 (Docket Number NRCS-IFR-09004). NMPF develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers before the federal government. NMPF and its dairy farmer members are proactive in their efforts to find and adopt better conservation practices for our operations.

CSP and Dairy Farmers

Many of the dairy farming systems in predominant use today in various parts of the US are potentially well suited to participation in the Conservation Stewardship Program (CSP). These are the operations that combine feed grain, oilseeds and forage production on their operations, making possible various soil and resource conserving rotations that can make significant contribution to addressing resource concerns. For example, dairy farmers are proud of the great strides they have made in dramatically reducing the sector's farm-level carbon footprint, as reported on recently in research conducted at Cornell University and published in the Journal of Animal Science. The article, entitled "The environmental impact of dairy production: 1944 compared to 2007," found that:

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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Modern dairy practices require considerably fewer resources than dairying in 1944 with 21% of animals, 23% of feedstuffs, 35% of the water, and only 10% of the land required to produce the same 1 billion kg of milk. Waste outputs were similarly reduced, with modern dairy systems producing 24% of the manure, 43% of CH₄, and 56% of N₂O per billion kg of milk compared with equivalent milk from historical dairying. The carbon footprint per billion kilograms of milk produced in 2007 was 37% of equivalent milk production in 1944.

Use of modern conservation measures for crop production as well as water and nutrient management will play a substantial role in reducing this figure still further, and CSP could play a critical role in helping sustain, accelerate and expand those accomplishments.

NMPF is a key and founding member of The Innovation Center for US Dairy, a collaborative effort to develop a roadmap for reducing greenhouse gas emissions by 20% by year 2020 within the dairy industry. The council is comprised of producers, processors, manufacturers, retailers, and other dairy industry stakeholders. The Innovation Center is working to implement and obtain funding for the 12 approved project plans that were endorsed in January and several other projects are undergoing further analysis and refinement. For more information go to <http://www.usdairy.com/sustainability/Pages/Home.aspx> (see the section titled The Commitment > Roadmap to Greenhouse Gas Reduction).

CSP can play a critical role for some dairy farmers in the future success of these types of projects as we work to see them initiated and completed throughout the dairy sector. We believe that your fundamental goal in this final rulemaking must be to make it simple and easy for CSP to be of real, concrete and practical assistance to farmers struggling to deal with their real and immediate conservation and environment needs and challenges. We encourage NRCS, under the flexibility granted the Secretary in the statute, to ensure that everything has been done to support this objective, both in the areas mentioned below and in any others that we may have missed.

CSP Eligibility Requirements

NMPF is concerned that the rule's treatment of eligible acres, "agricultural operations" and rented land in the context of CSP contract requirements is unnecessarily restrictive and limiting participation by many farms that are otherwise quite worthy under CSP's goals and objectives. These provisions are quite complicated as well, and during their implementation in the first signup there appears to have been more than one interpretation given as to the provisions' meaning and may have in fact limited access to the program this time around. Furthermore we are concerned that the CSP eligibility requirements established in the interim final rule do not conform to the farm bill's statutory

provisions, nor take full advantage of the appropriate flexibility available to NRCS relative to the issue of rented land. In so doing, the rule and its implementation may result in significantly fewer dairy farmers participating in the program than could otherwise be the case, given their resource and priority resource concerns and willingness to address them with enhanced conservation measures.

The interim final rule requires in subsection 1470.6(b) that “a contract application must include the eligible land on an applicant’s **entire** operation...which is under the effective control of the operator for the duration of the contract” (emphasis added). We are concerned that there may in fact be no statutory requirement in the CSP provisions of the farm bill that requires **all** of an applicant’s operation under their effective control to be covered by a contract. Section 1238E of the Food Security Act, as amended by the 2008 farm bill, says only that **eligible land** “shall include all acres of an agricultural operation of a producer, whether or not contiguous, that are under the effective control of the producer at the time the producer enters into a stewardship contract” (§ (b)(3)). While all such acres may be “eligible”, there is no requirement that the applicant enroll all these eligible acres as the rule requires.

We ask that NRCS give due consideration to whether or not the statute does require an entire operation under the control of the applicant to be enrolled in a program. If, as we are concerned, this language does not require the entire operation to be enrolled, we encourage NRCS to strike this requirement from the rule and instead consider whether a more flexible approach that is fully reflective of the program’s objective could be utilized so as to provide comprehensive solutions in a conservation systems’ approach.

Section 1238E of the Food Security Act, as amended by the 2008 farm bill directs the Secretary to carry out CSP to address resource concerns in a “comprehensive” manner (see § (a)). Such language provides guidance in our view as to how many acres of a producer’s operation must be included in the CSP contract. NMPF recommends that NRCS require an operator to enroll a sufficient quantity and type of acres from the producer’s operation to ensure that their operation’s potential contribution to the area’s resource and priority resource concerns can be properly addressed. This is not a fixed percentage of an operation, and it cannot be established in a one-size-fits-all approach.

Further guidance in this regard is implicit in the statutory requirement that a conservation stewardship plan be developed for a participating farm, which in practice requires a systems approach to managing conservation issues on the farm. This latter requirement is comparable to the approach used traditionally by NRCS in preparing “conservation plans” under the Conservation Technical Assistance (CTA) program. Fortunately, the CTA conservation plan approach has long dealt at the field level with the realities of conservation planning for farms that have sizable quantities of rental acres. NMPF recommends that NRCS draw upon its field level expertise with preparing

conservation plans for farms, in combination with the CSP's statutory direction to comprehensively address a farm's resource concerns, to determine on a case by case basis how much of a producer's acreage under their operational control must be enrolled in a CSP contract to make the conservation planning process work for that operation.

Relative to the rule's requirement that the operators be able to establish in writing that they have five year effective control of the rented land, we are concerned that NRCS's approach will be largely impossible for many dairy farmers to meet. This is because when most dairy farmers rent land, the rental and leasing agreements are annual in nature and firm, multi-year rental arrangements are rare. Furthermore, landlords are generally reluctant to indicate in any form of writing, even in documents that are non-binding as a legal matter, that they intend to sustain the lease arrangement for five years. As such, this requirement in the rule may have prevented many dairy and other farmers who rent land annually as part of their operations from applying for CSP.

This is highly unfortunate and we believe that NRCS should work to the fullest extent allowed under the CSP statute to include more of these rental acres in the program. Not doing so would mean that many modern commercial operations could be effectively excluded from CSP and the conservation incentives the program provides. CSP could not be used to improve or maintain conservation practices on these rental acres as part of their overall ongoing operations.

USDA's Economic Research Service and other US farm land tenure authorities report that approximately 40 to 50 percent of the cropland in production today is rented and farmed by an operator other than the owner. As noted above, while multi-year rental arrangements are rare, it is also quite common for a large portion of an operator's access to specific parcels of rental land to be quite stable over a multi-year period. If the operator and owner have found the rental arrangement to be mutually beneficial in the past, it is quite common for both parties to want to continue that arrangement year-after-year. The fact that such arrangements are not recorded in hard and fast long term rental agreements, nor in more informal, non-binding written agreements, is not a surprise as there are many factors that could come into play for either party that would make continuing the arrangement undesirable.

While the statute makes ineligible those acres for which the operator cannot demonstrate effective control over the life of the contract, NMPF does not believe that NRCS needs to require a written confirmation from the landlord that the operator has effective control for five years over the rental acres they are seeking to enroll. Instead, NRCS should simply take into account that while such long term arrangements are informal, they are also quite common. The responsibility for maintaining control of the rental acres under the original CSP contract should lie with the operator that enrolls those acres. Responsibility for failing to maintain control of such acres, or to report the loss of some of

the acres in the original contract and to seek to amend the contract with NRCS accordingly, should lie with the participating operator. NRCS can police these contract requirements, so as to ensure that no fraud or misrepresentation is taking place, by reviewing a sample of the contracts annually for this and other program integrity purposes.

Depending on how NRCS ultimately addresses the issue of “entire” operation and rental acres, this next point may no longer be entirely relevant. We understand that during the most recent CSP sign-up under this interim rule NRCS in at least some parts of the country was indicating to producers that contract applicants must enroll their entire operations, including 100 percent of the land that they would be renting (if any) over the five year contract, and that they could only do so if they had effective control over 100 percent of those rental acres. This is clearly inconsistent with the interim final rule at 1470.6(b) as it is currently written, in that “entire operation” means only those acres under an operator’s effective control. While we believe this section needs significant revisions given the statutory language and the inherent flexibility it creates (as discussed above), we recognize that this provision may remain intact in the final rule. As such, we ask that NRCS work to clarify the field’s understanding of this provision as it relates to effective control and rental acres. Applicants with farmland that would otherwise qualify and yet also farm some rental acres over which they have no effective control, must be made fully aware that they still could qualify for consideration under CSP for that farmland they do control.

Stability of Resource and Priority Resource Concerns

CSP requires that participating operators meet the applicable stewardship threshold for at least one resource concern on their farms, and that by the end of the contract to be doing the same for a “priority” resource concern. As intended, the statute sets a relatively high conservation starting point for participants (stewardship threshold for one resource concern) and sets a high contract goal (similarly addressing a “priority” resource concern by the end of the contract). In order for CSP to provide a meaningful incentive for operators that are not currently able to meet these requirements but would like to do so at some point in the future, the applicable resource and priority resource concerns for the area need to be stable and consistent. As such, the producer could have the confidence that bringing their operations up to the basic stewardship threshold level for one or more of the resource concerns may in fact lead to a CSP contract in the future.

If the resource concerns change too often and in an unpredictable manner, CSP cannot serve as an effective incentive for operators to improve their performance. While NMPF does not believe that a “stability” requirement for these resource concerns needs to be established in the rulemaking, it is a critical consideration for NRCS to take into account in its management of the program and request that this issue be properly addressed in the implementation of this rule.

Sustainability and the Conservation Stewardship Activities List

NMPF finds the “Conservation Stewardship Program Activity List for Planners” to be a useful document for potential program participants. By providing a comprehensive list of the types of practices that NRCS considers most relevant for a CSP contract, potential participants can both judge how well their current operations stack up, and also what they must do on their operations relative to the resource concerns in their area to be able to participate. NMPF encourages NRCS to make this list widely available and to fully educate producers as to its use and applicability. What is unclear is how this list relates specifically to the ranking process used in CSP contract approvals, if at all, and how this list relates to the Conservation Measurement Tool (CMT). NRCS should clarify how this list relates in this regard.

Furthermore, it is unclear as to the process used by NRCS in establishing the so-called “Conservation Performance Effectiveness” rating for each of the practices on the Activity List. NRCS should establish clear and objective standards for this purpose and use them in a transparent, objective manner so as to ensure that there can be no appearance that bias unrelated to broadly held conservation objectives could be entering the process.

NMPF greatly appreciates the opportunity to offer you the above comments in support of a fine and important program. Dairy farmers support CSP and believe it is an essential element in the federal government’s toolkit to help farmers improve their environmental performance through the adoption of advanced conservation measures and environmental practices. We look forward to working with NRCS on this important program in support of better environmental performance.

Sincerely,

A handwritten signature in blue ink that reads "Jamie S. Jonker". The signature is written in a cursive style with a large, stylized initial "J".

Jamie S. Jonker, Ph.D.
Vice President, Scientific and Regulatory Affairs