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Attn: Conservation Security Program

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From: tthies@beef.org
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To: FarmBillRules
Subject: Attn: Conservation Security Program
Attachments: ATTACHMENT.TXT; CSPInterimFinalRuleComments100504.pdf

Attached are NCBA's comments on the Conservation Security Program.

<<CSPInterimFinalRuleComments100504.pdf>>
Tamara McCann Thies, Esq
Director, Environmental Issues
NCBA
1301 Pennsylvania Ave NW Suite 300
Washington DC 20004-1701
202-347-0228
<http://hill.beef.org>

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NATIONAL CATTLEMEN'S BEEF ASSOCIATION

1304 Pennsylvania Ave., NW Suite #300 • Washington, DC 20004 • 202-347-0228 • Fax 202-638-6817

October 5, 2004

SUBMITTED ELECTRONICALLY

Financial Assistance Programs Division
Natural Resources Conservation Service
U.S. Department of Agriculture
P.O. Box 2890
Washington, DC 20013-2890

Attn: Conservation Security Program

RE: Comments on the Interim Final Rule to Implement the Conservation Security Program (7 CFR Part 1470)

The National Cattlemen's Beef Association ("NCBA") submits these comments on behalf of its members in response to the Interim Final Rule Request for Comments published in the Federal Register on June 21, 2004. This Interim Final Rule implements the provisions of Title II of the Farm Security and Rural Investment Act of 2002 ("the 2002 Farm Bill") relating to the Conservation Security Program.

NCBA is the trade association of America's cattle farmers and ranchers, and the marketing organization for the largest segment of the nation's food and fiber industry. CSP could be an important tool for NCBA members because it will broaden the availability of assistance to farmers and ranchers who face threats to soil, water, air and natural resources on their land. NCBA is currently working closely with NRCS and the Administration on a multi-year effort to get cattle producers the conservation assistance they need, as there is an ever-increasing need for financial and technical assistance for conservation planning, program implementation and regulatory compliance.

NCBA's comments on the interim final rule for CSP follow.

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Entitlement Cap: When Congress passed the 2002 Farm Bill, it envisioned the CSP to be an entitlement program with an estimated cost of \$7 billion. Unfortunately, the FY 2003 Omnibus Appropriations bill capped funding at \$3.77 billion over ten years. This cap was put in place prior to the issuance of final regulations for the CSP. Consequently, the NRCS made the unfortunate decision to write the proposed CSP rule as a significantly curtailed program. The NCBA believes that this was the wrong decision. Instead of writing a program to fit a budget situation, the NRCS should propose the best possible regulation that is appropriate for an entitlement program, as envisioned by Congress, and also seek comment on how it would curtail the program in years when there is a budget shortfall. To do otherwise, results in the situation we currently have: a virtually unworkable program that provides minimal benefits to very few agricultural producers. Indeed, a number of NCBA members indicated that the CSP is an unusable program, as proposed. A number of others indicated that a significant rewrite was necessary to make it usable.

Fortunately, Congress removed the cap and restored full funding to CSP when it passed the 2004 Consolidated Appropriations bill in January. In addition, on September 14, 2004, the Senate Appropriations Committee restored the CSP as a mandatory entitlement. NCBA is hopeful that the House/Senate conferees will agree to make it an entitlement.

NCBA urges NRCS to act to restore the original statutory intent and propose a new rule that would allow CSP to function as an uncapped entitlement program available to all producers nationwide. The benefits of such a nationwide program are substantial. A USDA analysis concludes that a fully implemented CSP would provide a \$62 billion benefit to the public above costs over a ten year period. Many of these benefits would be lost if the program is implemented as proposed in the interim final rule. NCBA urges NRCS to make the CSP usable for all producers nationwide so that significant environmental concerns can be addressed, and substantial estimated benefits can accrue to our nation as a whole.

Watershed Limitation: When Congress enacted the CSP, it envisioned a full national program. No reference was made to giving preference to producers in a few "priority watersheds," except for enhanced payments made to producers who cooperate within a watershed. A watershed limitation option should be considered or used only during times of a budget shortfall. Otherwise, the program should be developed and implemented as an entitlement. This watershed limitation severely and unnecessarily limits enrollment in CSP. The watershed approach should be eliminated so that all producers can participate in the program as provided in the law.

Water and Soil Quality Requirements: The interim final rule, like the proposed rule, requires that in order to be eligible to participate in the CSP program, a producer must have already "addressed all the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment" as described in Section III of the

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FOTG for Tiers I and II, and all of the resource concerns listed in Section III of the FOTG with a "resource management system that meets the minimum level of treatment on the entire agricultural operation" for Tier III. Nothing in the statute requires that a producer must already meet criteria in order to participate. Part of the purpose of the CSP is to enable a producer to reach these minimum standards. They should not be required to have already met them.

In addition, the NCBA opposes the priority placed on addressing soil and water quality concerns for participation. The purpose of the CSP is to assist producers in addressing all resource concerns as identified in the FOTG. This fact is clear in the law. Section 3838a(a) of the Conservation Security Program requires that the Secretary of the USDA establish the CSP to assist agriculture producers in promoting the "conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes . . ." The NCBA urges the NRCS to restore the intent of the program and place all resource concerns listed in the law on equal footing for participation.

NCBA also requests that the NRCS add back in the word "air" after the word "water" in § 1469.1 (c). Air emissions from agriculture operations are being regulated like never before. It is inconceivable that the CSP could not be used to address air quality issues.

No Stewardship Payment for Feedlots: Section 1469.23(a)(5) of the interim final rule prohibits feedlots from being included in the stewardship payment computation. This is an arbitrary and inherently unfair provision. The statute disallows payment only in two very narrow and specific instances. Section 3838c(b)(3) disallows a payment to a producer for "construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or . . . the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice . . ." These are the only two instances in which payment should be disallowed. There are many conservation stewardship practices that could be undertaken on a feedlot that do not fall in these categories. Examples include practices to control dust or ammonia emissions, as well as practices to control runoff into our Nation's waterways. NCBA urges the NRCS to remove this unfair and unwarranted provision. Feedlots should not be treated differently from other agricultural operations. The statute does not provide for this kind of discrimination. Instead, Congress envisioned treating all agricultural operations the same. Keeping the provision would virtually guarantee that no feedlot would participate in the CSP. This result would be unfortunate and is contrary to the intent of the law.

Stewardship Payment Rate: NCBA strongly supports the use of regional or localized rental rates rather than a national rental rate to determine the level of the stewardship payment rate. However, we are concerned that in some parts of the country, particularly with regard to rangelands, the use of the local rental rate, together with proposed reduction factors, will make the stewardship payment too low for producers to be willing

to participate in the CSP. The interim final rule states that the stewardship payment rate for each land use category initially would be determined using: (1) the average 2001 rates from the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, (2) the National Agriculture Statistics Service (NASS) land rental data, and (3) the Conservation Reserve Program (CRP) rental rates. The initial stewardship payment rate would then be multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III. This lower payment proposal results in a very low stewardship payment rate and is contrary to the law. For example, this formula will bring the stewardship rate for rangelands to near zero dollars in several watersheds that are participating in the 2004 program (Auglaize, Blue Earth, Little, Raystown, Saluda and St. Joseph). The formula needs to be fixed. The statute requires that the 2001 national rental rate, or another appropriate rate to reflect local conditions, be used by the Secretary to establish the CSP stewardship payment. In addition, CSP report language states that "the Secretary shall not provide a rate lower than the national average rental rate." NCBA urges the NRCS to establish stewardship payments that will be in compliance with the intent of the law, and make all lands that were intended to be included in the CSP eligible for a reasonable stewardship payment, while continuing to base it on a regional or local rental rate.

Overall Contract Limit: § 1469.23(a)(3) states that the "NRCS will compute the stewardship component of a participant's CSP payment as the product of: the number of acres in each land use category (not including "other" or land not in the applicant's control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments." NCBA is concerned that this overall contract limit will result in very small payments to producers who have small acreages or who want to put lower value land, such as rangeland, in the program. Whenever you multiply any value by a small number, the product is a small number. NCBA urges the NRCS to reconsider this contract cap because it will discourage many producers from participation in the CSP.

Cost Share: Unfortunately, the interim final rule proposes cost share payments that are less than EQIP. The only limit the statute provides is 75% for cost share, and it anticipates the same payments as provided in the EQIP program. The report language clearly states: "The Secretary should provide cost-share assistance at a comparable rate as that provided under the Environmental Quality Incentives Program for the same practices." Instead of cost-share payments being similar to EQIP, the interim final rule states that for new practices the payments will not "exceed 50 percent of the average county costs of installing the practice..." In addition, the interim final rule states that "NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice." This is an unfortunate decision. Agriculture producers should be able to cost-share any practices that are listed in Section 3838a(d) of the 2002 Farm Bill, or any approved and listed in the NRCS FOTG, that are appropriate to address environmental issues on their operations. In addition, the cost share percentage needs to be sufficiently attractive to encourage producer participation.

It makes little sense for a producer to lock himself into a minimum five year commitment for a program that pays less than other programs. Because the proposed program is so complicated, and the proposed stewardship and cost share payments are so low, NCBA believes very few producers will be willing to participate in the CSP program. In addition, the NCBA members are concerned about the possibility that if a producer participates in the CSP, he would be given a low priority for participation in other programs. For these reasons, NCBA predicts that very few producers would be willing to participate in the CSP.

CSP Applicants to Develop Benchmark: Section 1469.5(c)(4) of the interim final rule requires that CSP applicants “complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a).” Section 1469.7(a) requires that the “benchmark inventory must include: (1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage. (2) A description of the applicant’s production system(s) on the agricultural operation to be enrolled. (3) The existing conservation practices and resource concerns, problems, and opportunities on the operation. (4) Other information needed to document existing conservation treatment and activities, such as grazing management, nutrient management, pest management, and irrigation water management plans; and (5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures. (6) A list of enhancements that the producer may be willing to undertake as part of their contract.” This benchmark condition inventory will be used to determine eligibility, payment levels, and etc. NCBA is concerned about the fact that requiring the CSP applicant to perform all these assessments would be prohibitive. While some applicants would be able to do a good job completing their benchmark requirements, many other potential applicants may not have the technical expertise required to do an accurate job. NCBA assumes that the reason this provision was included in the proposed rule was to cut down on work that would be required to be performed by NRCS staff. While NCBA is concerned that the whole program is extremely labor intensive, we submit that imposing this benchmark determination requirement on applicants is not a good area for cutting costs. NRCS would have to validate claims anyway. This benchmark determination requirement is a disincentive to participation. NCBA suggests that NRCS staff should be made available to any producer who needs assistance to perform this task.

Periodic Sign-up: The interim final rule provides for a periodic sign-up for the CSP program. NCBA strongly recommends that the sign-up period be continuous. It is important for producers to be able to sign up for a program during a time that is convenient for them. Making the sign-up periodic is an additional unnecessary deterrent to participation.

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Eligible Practices: Section 3838a(d) of the 2002 Farm Bill provides a comprehensive list of conservation practices that may be implemented by a producer under the CSP program. The law disallows payment for only two practices: Section 3838c(b)(3) disallows a payment to a producer for "construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or . . .the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice . . ." Unfortunately, the NRCS has chosen ignore the suggestions of a large number of commenters who asserted that, at a minimum, all practices listed in the statute should be eligible for CSP payments. Instead, the NRCS will publish a specific list of eligible practices at each sign-up. It is shortsighted to limit the list of eligible practices. As the NRCS is well aware, no two agricultural operations are the same. Such operations should not be disallowed payment for practices that work well to accomplish conservation goals. NCBA urges the NRCS to allow payment for the comprehensive list of eligible practices contained in the law.

Thank you once again for this opportunity to provide NRCS with NCBA's comments on the proposed rule for the CSP. It is our hope that the NRCS will choose to restore the original statutory intent and make the CSP a workable, uncapped entitlement program available to all producers nationwide. We hope that our comments will help in this effort.

Sincerely,

Tamara McCann Thies
Director, Environmental Issues
National Cattlemen's Beef Association