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HEARING TO REVIEW IMPLEMENTATION OF THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008

HEARING

BEFORE THE

SUBCOMMITTEE ON
GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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HEARING TO REVIEW IMPLEMENTATION OF THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008

WEDNESDAY, JUNE 24, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND RISK MANAGEMENT,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m., in Room 1300 of the Longworth House Office Building, Hon. Leonard L. Boswell [Chairman of the Subcommittee] presiding.

Members present: Representatives Boswell, Ellsworth, Walz, Herseth Sandlin, Markey, Moran, Conaway, and Luetkemeyer.

Staff present: Claiborn Crain, Scott Kuschmider, Clark Ogilvie, James Ryder, Rebekah Solem, Kevin Kramp, Josh Mathis, Josh Maxwell, Pelham Straughn, and Jamie Mitchell.

OPENING STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM IOWA

The CHAIRMAN Thank you very much, and I want to thank you for joining us here today as we take an examination of the implementation of the Food, Conservation, and Energy Act, or the farm bill, if you will. I would like to give a special thanks to our witnesses for testifying before the Committee and to offer your insight into the current status of many of the new programs executed under the farm bill. A special thanks to my fellow Iowan and current Chairman of the National Corn Growers Association, Ron, good to have you here. He farms in Greene County with his family, and I very much look forward to hearing all the witnesses' testimony. Everyone in this room knows what a tough process the 2008 Farm Bill was. For me, the farm bill is one of the most important pieces of legislation Congress works on every 5 years because every man, woman, and child in my opinion has a vested interest in agriculture.

Whether you live in Davis City where my address is in Iowa or in the inner city of New York, your life intersects with agriculture multiple times a day. I tell folks like our colleagues from the inner city there are three things for sure that comes from agriculture that everybody is interested in. We have the most plentiful, safest, and the least expensive food in the world and so we all have an interest in it, and because we all participate in the things we do with agriculture, we have that. In the 2008 Farm Bill, we ex-

panded many programs essential to the safety net for farmers and ranchers and made some reforms, and in cases such as the Average Crop Revenue program, ACR, created a new tool for producers to manage their risk.

I am very interested to hear from the witnesses today on the level of communication between USDA and producers. I know there has been some confusion about many of the provisions in the farm bill and much information is slowly getting to country FSA offices, which often hinders producers in making their best informed choice. I would also like to mention that USDA has done some things very well. Everything is not run perfectly, but I have no doubt that the Secretary and his staff are working non-stop on behalf of farmers and ranchers across the country. I would just like to end on one point, and I just said it again, that we have the safest, most plentiful and affordable food in the world, and we hope that the 2008 Farm Bill keeps it that way. At this time, I would like to turn it over to my good friend and my colleague, Jerry Moran, from Kansas for any remarks he would like to make.

[The prepared statement of Mr. Boswell follows:]

PREPARED STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM IOWA

I would like to thank everyone for joining me here today as we take a thorough examination of the implementation of the Food, Conservation, and Energy Act of 2008, commonly known as the farm bill. I would like to give a special thanks to our witnesses for testifying before the Committee and to offer their insight into the current status of many of the new programs executed under the farm bill. And a special thanks to my fellow Iowan and current Chairman of the National Corn Growers Association, Ron Litterer. Ron farms in Greene, Iowa with his family. I very much look forward to hearing all the witnesses' testimony.

Everyone in this room knows what a tough process the 2008 Farm Bill was. For me, the farm bill is one of the most important pieces of legislation Congress works on every 5 years because every man, woman, and child has a vested interested in agriculture. Whether you live in Lamoni, Iowa or the inner city of New York your life intersects with agriculture multiple times a day.

In the 2008 Farm Bill we expanded many programs essential to the safety net of our farmers and ranchers. We also made modest reforms and in cases, such as the Average Crop Revenue Program (ACRE), created a new tool for producers to manage their risk.

I am very interested to hear from the witnesses today on the level of communication between USDA and producers. I know there has been much confusion about many of the provisions in the farm bill and much of the information is slowly getting to county FSA offices which often hinder producers making the best informed choice.

I would also like to mention that USDA has done some things well. Everything has not run perfectly but I have no doubt that the Secretary, and his staff, is working non-stop on the behalf of farmers and ranchers across the country.

I would just like to end on one point. The United States has the safest, most plentiful, and affordable food supply in the world. The programs in the 2008 Farm Bill help to keep it that way.

At this time I would like to turn it over to my good friend and colleague, Jerry Moran from Kansas for any opening remarks he would like to make.

OPENING STATEMENT OF HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM KANSAS

Mr. MORAN. Mr. Chairman, thank you very much, and thank you for the courtesy of delaying the Committee meeting for a couple of minutes for my arrival. I am pleased that we are having these hearings. Obviously, the implementation of the farm bill is impor-

tant. We spent a significant amount of time in this Committee in trying to derive a farm bill that is satisfactory to the benefit of American agriculture producers. In today's environment, economic environment, with a significant increase in input costs, with uncertainty about environmental rules and regulations, I think our farmers face very significant and serious challenges for economic survival, and the farm bill is one component in which we can be of help to see that a way of life that feeds the world, feeds and clothes the world, is maintained.

I will forego any additional opening statement knowing that you and I both need to be at a Subcommittee markup on the transportation bill that is important, certainly, to rural America and all of agriculture. I thank you for your courtesies and I am delighted to be here and look forward to hearing from the witnesses.

The CHAIRMAN Thank you. And for the rest of our Members, we will follow the normal procedure and hope that is satisfactory. The Chairman requests that other Members submit their opening statements for the record.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Thank you, Chairman Boswell, and thanks also to the Ranking Member, Mr. Moran, for your leadership on this Subcommittee and for your calling this week's hearings on Food, Conservation, and Energy Act implementation. I am looking forward to hearing both days of witness testimony.

If you are following what is going on up here, implementation of this bill hasn't been the first thing on a lot of our minds. However, today is a good time to take a moment and review implementation of farm policy and examine how it is working for everyday farmers and ranchers across the country.

Tomorrow, we will hear from the Administration on their progress with implementation. Today, we will hear from the producer and farm groups on what is working, and what isn't.

We are just over a year removed from enactment of a historic farm bill that made significant income eligibility and payment limit reforms while preserving the farm safety net. The Act required the Administration to amend previous policies by replacing the three-entity rule with direct attribution, and placing hard caps on both on- and off-farm income.

The timing of farm bill implementation was difficult in some respects, in part to the change of Administrations, and the new team at USDA having to deal with rulemaking that was inconsistent with Congressional intent. And, like all incoming Administrations, the new group was understaffed from the start. But USDA, in my opinion, has made a worthy effort to implement a very complex set of policies and programs developed by the bill.

Unfortunately, delayed rulemaking can cause uncertainty in the countryside, and today's witnesses can help us find out what's on the mind of farm country when it comes to implementation. I know, for example, there has not been any movement on rules for the new disaster program, and with input costs and weather uncertainty as high as ever, farmers and ranchers need to know that this program will be up and running should they need it.

I also know the groups today have had issues dealing with confusing rules on payment eligibility and the definition of "actively engaged"; issues that were held over from the last Administration. There have also been things that we've already had to fix, like the misinterpretation of the base acre provision.

I share one major concern of the producer groups: trying to implement a new farm bill with one of the most out-of-date computer systems in the Federal Government. This has been a big issue with this Committee for quite some time, but I hope our witnesses today can help send a message on what it would mean for the delivery of programs and for our producers if we don't modernize the system.

I know the groups here today are strong supporters of our farm policy and support timely implementation of its provisions. I hope you all can help us understand what is working and what isn't. Some of the problems you guys face are obvious to the

Committee, while some may not be so obvious, so whatever light you can shed on the process so far would be helpful to us.

Thank you again, Chairman Boswell, for calling this hearing today. I yield back.

The CHAIRMAN Again, welcome to the panel, and I just recognize all of you from the different areas you represent and we have great representation, so I appreciate having you here. Again, President Stallman from the American Farm Bureau, thank you for being here and your hard work with us, Ron Litterer, which I have just recognized a moment ago, a corn, soybean, and hog producer, and Chairman of the National Corn Growers Association, Jay Hardwick, Chairman of the National Cotton Council from Newellton, Louisiana, Mr. Erik Younggren, a wheat, sugar beet, and soybean producer and Secretary-Treasurer of the National Association of Wheat Growers from Minnesota, and Mr. Roger Johnson, President, National Farmers Union, Washington, D.C. Thank you for being here. I think we will start off with you, Mr. Stallman, and we will go through each one of them. We will have our Q&A time, and we are looking forward to what you all have to share with us. Mr. Stallman.

STATEMENT OF BOB STALLMAN, PRESIDENT, AMERICAN FARM BUREAU FEDERATION; RICE AND CATTLE PRODUCER, COLUMBUS, TX

Mr. STALLMAN. Thank you, Mr. Chairman, Ranking Member Moran, Members of the Committee. I am President of the American Farm Bureau Federation and a rice and cattle producer from Columbus, Texas. The Farm Bureau is the Nation's largest general farm organization representing producers of every commodity in every state of the Nation. We greatly appreciate this invitation to speak to the Subcommittee this morning. The political climate and timing of the passage of the 2008 Farm Bill created several challenges for implementation. The bill passed with strong opposition from the previous Administration as their tenure grew to a close. USDA in the beginning weeks of the Obama Administration could best be described as understaffed and overworked. Movement on many farm bill rules slowed to a crawl. The result was a great deal of uncertainty in the countryside during the 2009 planting season.

Before I express some of our concerns, I would like to point out some farm bill implementation successes. First, we saw the Obama Administration immediately grant a much needed extension to the comment period for the payment eligibility rule. Secretary Vilsack and his staff also worked to change a provision in the ACRE rule that removed the base from Federal lands. This provision yanked the safety net out from under some farmers making it impossible for them to get production loans to continue to farm and conserve Federal land. Producers and wildlife habitat would have suffered had this rule not been reversed. Despite these positive developments, our farmers have expressed numerous frustrations with the implementation process.

One of the most common questions we get is when will disaster program money be available? For a year now the answer has been we don't know. We don't have rules yet. It is not an answer that is well received by farmers who have seen their operations devastated by natural disaster. For this reason, we have urged USDA

to work diligently to implement the program as quickly as possible. Even after rules for the disaster program were finalized, USDA will face technological challenges in rolling it out. USDA runs one of the most antiquated computer systems in all of the Federal Government. The limitations of this older technology could be an enormous hurdle to implementing increasingly complex farm programs. The Farm Bureau has consistently requested additional funding for FSA IT needs, but to date USDA has only been appropriated a small fraction of the IT money required.

We urge the Agriculture Committee to work with USDA and the Appropriations Committee to secure this necessary funding. Another farm bill implementation issue that we are watching closely is the announced collaboration between the IRS and USDA. While the Farm Bureau is concerned about this collaboration, we are reserving judgment until further details are known. If handled correctly, this collaboration could provide producers with an alternative to providing annual confidential business information to local FSA offices. While farmers and ranchers greatly respect the work done by FSA staff, local FSA offices simply are not equipped to handle confidential information. As USDA moves forward with this collaboration, we have urged the Department to consider several points.

First, confidentiality is paramount. It is also important that follow-up audits be handled at a centralized FSA location by trained experts. The timing of audits will be critical and the Farm Bureau opposes any time line that would delay farm program payments. The final concern that we would like to discuss is the change to the definition of *actively engaged* for purposes of determining farm program eligibility. This change impacts every farm, no matter the size, no matter the crop, and no matter the region. One of the most glaring problems with the new actively engaged rule is that it discriminates against family farms that are organized as corporations. While there is an abundance of rhetoric in opposition to corporate agriculture and in support of family farms, what is often overlooked is that they can be one and the same.

The corporate business structure is the logical choice for limiting liability, and in some states there can be some significant tax benefits to organizing a farm business as a corporation. Organizing a farm as a corporation does not make it any less of a family business. To give you an idea of exactly how this change could negatively impact the family farm operation, let me walk you through a scenario. The new actively engaged rules demand that every shareholder in a farm corporation prove that they are actively engaged in agriculture, or they will have part of the safety net stripped from under them. Let us say that you operate a farm with your two brothers and you have chosen to organize your family farm as a corporation. You have a son that would like to farm with you but first he would like to go to college. You have known for some time that your son wants to farm with you so you have been gifting him small shares of the corporation.

Your son now owns ten percent of the shares of the corporation. He is 18. He is moving away from the farm to go to college and earn a degree in ag business. But when he is away at school, his participation in the daily activities on the farm are hindered to a

degree that he cannot prove his contributions are separate, distinct, documentable, identifiable, and commensurate with his share of ownership, and he is deemed not to be actively engaged. Your family farm is looking to lose ten percent of its safety net just because you want to pass the farm on to your son and that son wants to go to college. We urge USDA to reconsider changes such as this in the payment eligibility rule.

In conclusion, we appreciate the hard work of this Committee and USDA to implement the farm safety net, and we look forward to working with you to ensure that the best interests of farmers are paramount during this implementation process. Thank you again for the opportunity to speak, and I look forward to questions.

[The prepared statement of Mr. Stallman follows:]

PREPARED STATEMENT OF BOB STALLMAN, PRESIDENT, AMERICAN FARM BUREAU FEDERATION; RICE AND CATTLE PRODUCER, COLUMBUS, TX

My name is Bob Stallman. I am President of the American Farm Bureau Federation and a rice and cattle producer from Columbus, Texas. I appreciate the invitation to speak to the Subcommittee this afternoon. Farm Bureau is the nation's largest general farm organization, representing producers of every commodity, in every state of the nation as well as Puerto Rico, with more than six million member families.

I would like to thank Subcommittee Chairman Boswell and Ranking Member Moran for holding this hearing. The farm bill touches the lives of every producer in this country. It was a long, hard road to passage of the 2008 Farm Bill, and thanks to the hard work of this Committee, the end product was a fiscally responsible compromise of which we can all be proud. However, the work does not end with the passage of legislation, but continues and often becomes more difficult as that legislation is implemented.

The political climate and timing of the passage of the 2008 Farm Bill created several challenges for implementation. The bill passed as the tenure of the former Administration was drawing to a close. The Administration was tasked with implementing the bill during their final days in office, and the unfortunate result was in some instances rules that are inconsistent with Congressional intent. Examples of this include the definition of actively engaged, the 10 acre provision and the elimination of base from Federal lands.

One of the most important and controversial rules, the rule on payment eligibility, was published in the *Federal Register* on December 26, 2008. It was not a welcomed Christmas gift in the countryside. The late date left the incoming Obama Administration with very little time or opportunity for change before the rule would have to be implemented.

As with all new Administrations, USDA in the beginning weeks of the new Administration was understaffed and overworked. Movement on farm bill implementation rules came to a halt. While USDA is clearly now making progress on these rules, the delays have left a great deal of uncertainty in the countryside during this planting season.

Planning for your business is always difficult, but the uncertainty of the rules and the current economic turbulence has made applying for operating loans even more challenging.

Implementation Successes

Before I focus on specific concerns, I would like to take a moment to point out some of the farm bill implementation successes. Once the farm bill was passed, the USDA did an excellent job of getting checks out to farmers as quickly as possible. Given that 2008 was a year of historically high input costs, this meant a great deal to our producers.

The Obama Administration immediately moved to correct several concerns we had with the way farm bill implementation had been proceeding.

- Secretary Vilsack quickly granted an extension to the comment period for the payment eligibility rule that was promulgated in the final days of the previous Administration. This extension was requested by several of the groups testifying today. The extension allowed us time to evaluate a very complex rule and to determine the possible impacts on farm operations.

- Secretary Vilsack and his staff also worked to change a provision in the ACRE rule released in December 2008 that removed the base from Federal lands. This elimination of base was not required by statute, but was interjected in the form of a rule. In some parts of the country, farmers produce crops on lands owned by the Fish and Wildlife Service, the Army Corps of Engineers and other Federal agencies. In exchange for use of the land, farmers typically agree to leave part of their crop in the field for wildlife feed and habitat. This arrangement was a win for conservationists and farmers alike. However, the ACRE rule in its original form removed the farm safety net from these farmers, making it impossible for them to get production loans to continue to farm. Producers and wildlife habitat both would have suffered had Secretary Vilsack not reversed the rule.
- Finally, Secretary Vilsack brought a small degree of resolution to the way the 10 acre provision of the farm bill was being implemented. This provision prohibits any producer with 10 or fewer base acres from receiving a direct, countercyclical or ACRE payment. The manager's statement that accompanied the farm bill made it clear that Congressional intent was for producers to be able to aggregate their base acres to get above this 10 acre threshold. However, the original interpretation of this provision did not allow aggregation, and prohibited legitimate reconstitutions of parcels. The result was more than 460,000 farms were deemed to be no longer eligible for the farm safety net. While farmers are still not allowed to aggregate their base acres to get above the threshold, the reconstitution rules have be restored so that some producers have been allowed back into farm programs.

Implementation Concerns

Despite these positive developments, farmers also have had numerous frustrations with the implementation of the farm bill. As a general agriculture organization that represents the interests of all types of producers from all regions of the country, I would like to mention on a few of the hurdles that we face in order to make the 2008 Farm Bill one that works for the farmers it's designed to protect.

Disaster Assistance

One of the most common questions we get from farmers concerns the delivery of disaster program assistance. For over a year, we have been unable to answer that question since the rules have not been published. Many farmers faced major disasters in 2008. It was a year of late-season flooding and crop destruction from hurricanes on the Gulf Coast, early season levy-breaks in the Midwest, devastating spring freezes in the Northeast, and extreme drought in the Carolinas, Georgia and Texas.

One of the expressed goals of the farm bill's supplemental disaster package is to provide farmers with more timely, consistent assistance when they face devastating natural disasters. Ad hoc disaster dollars are difficult to secure, and the farm bill provided an opportunity to streamline disaster assistance programs and ensure funding. Yet, a year after the passage of the farm bill, there are no rules for the disaster program, let alone a target date for when producers will receive assistance under these programs.

For farmers who are facing tightening credit markets and are already stretched by high input costs combined with this year's lower commodity market prices, the disaster program could provide meaningful assistance. We urge USDA to work to implement the program as quickly as possible.

Information Technology

Even after the rules for the disaster program are finalized, we understand that USDA will face technological challenges in cutting checks for farmers who have been devastated by natural disaster. USDA, and more specifically, FSA, runs on one of the most antiquated computer systems in the Federal Government.

The limitations of this older technology create enormous hurdles to implementing the complex provisions of the farm bill, such as the disaster package, and results in inefficiencies throughout the department. It is unclear how long the antiquated system can continue to support increasingly complex farm programs. Systems across agencies under USDA jurisdiction cannot communicate with each other, which could lead to improper payments and duplicate paperwork. Upgrading FSA computer technology now will lead to greater efficiencies and could prevent a future system failure.

USDA has stated that they need approximately $300 million for technology upgrades to ensure a smooth and reliable implementation of farm bill programs and Farm Bureau supports additional funding for FSA's technology needs. We urge the

Agriculture Committee to work with USDA and the Appropriations Committee to secure the necessary funding.

USDA Collaboration With IRS

Another farm bill implementation issue that we are watching is the collaboration between the IRS and USDA that was announced by Secretary Vilsack in March. While Farm Bureau is concerned about this collaboration, we are reserving judgment until further details are known. Farm Bureau is extremely sensitive to producer privacy concerns, but if this is handled correctly, it could provide producers a more secure and private alternative to providing annual confidential business information and tax documentation to local FSA offices and county committees.

We are concerned most FSA offices do not have adequate storage nor the security to ensure the safety of information that could be used to commit identity theft and fraud. Additionally, the business nature of information could create a conflict of interest for FSA employees at the local office. In many small towns, agriculture is the backbone of the community. It would not be unusual for the local FSA employee to have relational ties to other farmers or agribusinesses in the area. While farmers and ranchers greatly respect the work done by FSA staff, providing highly sensitive and confidential documents such as IRS forms to local offices is not prudent. Centralizing this function and cooperating with IRS for payment eligibility purposes *could* be acceptable, but the devil will be in the details.

Our understanding of the proposal is that USDA will provide the IRS with a set of income criteria, and the IRS will use this criteria to "red-flag" certain producers who could exceed the Adjusted Gross Income (AGI) limits. USDA will then request additional information from "red-flagged" producers and conduct an audit.

As USDA moves forward, we have urged the department to consider several concerns. First, confidentiality is paramount. Any proposal that allows any IRS information to become public through the Freedom of Information Act (FOIA) is unacceptable to Farm Bureau and its members. The ability of an organization or private citizen to obtain the list of producers who have been red-flagged by the IRS would be very problematic. There are numerous people and organizations who do not understand the farm safety net and oppose these programs outright. To give these people a list by which to further their political goals is unacceptable. The assumption would be made that these farm program recipients are guilty of exceeding the limit regardless of whether they are later proven innocent and could do irreparable damage to producers' reputations and to the reputation of farm programs. It is critical that no information obtained by USDA through the IRS be subject to FOIA rules.

It is also important that once producers are red-flagged by the IRS any additional investigation required be handled at a centralized FSA office. If this information is going to be delegated to local FSA offices, then all of Farm Bureau's aforementioned concerns about confidentiality, storage and employee conflicts of interest apply. It's important that trained experts conduct the follow-up audits on producers. The IRS and 2008 Farm Bill definitions of on-farm income are not identical. It is critical that FSA employees entrusted with gathering additional information about producer eligibility have adequate training in accounting to make the proper judgment. The timing of audits will also be important. Producers should not be assumed guilty until proven innocent, and Farm Bureau opposes any timeline for audits that would delay critical farm program payments.

The standards used to red flag producers also will be pivotal. The goal of this joint arrangement should not be to audit thousands of producers every year. USDA has neither the time nor resources for such an effort, and given the other safeguards in place, such a system of audits would be wasteful and unnecessary. A criteria should be developed that identifies a manageable number of producers who come closest to exceeding the requirements.

Actively Engaged

Our final concern deals with changes to the definition of "actively engaged" for purposes of determining farm program eligibility. Our concerns are similar to those raised by other organizations, and our members felt strongly enough about this issue that our delegate body voted last year to include language in our policy book declaring that no changes should be made to the definition of actively engaged. This issue, along with the payment eligibility issues, are often incorrectly associated only with Southern agriculture. Yet, the first call Farm Bureau received expressing concern about the payment eligibility rule came from the State of Montana. The second call was from Illinois. The changes in this rule impact every farm, no matter the size, crop or region.

The proposed changes to the definition of *actively engaged* hurt farmers and create uncertainty across the countryside. Under the old rules, producers had to meet

a two-pronged test: they had to show that they contributed capital, land and/or equipment, and they contributed labor and/or management to the operation. The new rule takes the labor and management requirement to an entirely new level by further mandating that this management be "separate and distinct" and "identifiable and documentable," but provides no clarification as to what this means. At a minimum, this lack of clarity will almost certainly result in a multitude of standards being applied across the country.

These changes also fly in the face of common business sense. As with any business, numerous stakeholders could have input into key decisions, but roles may overlap or change as needed. In an operation consisting of four brothers, it is quite possible that decisions are made by the group, making "separate and distinct" an illogical standard to apply. Fundamental business principles may prevent every decision from being "documentable." It is not prudent or practical to have a multitude of stakeholders with signature authority on payroll, marketing or purchasing accounts, yet this seems to be what the new rule implies should be done in order to ensure that everyone's contribution is "documentable."

The new actively engaged rule also appears to discriminate against family farms that are organized as corporations. While there is an abundance of rhetoric in opposition to "corporate agriculture" and in support of "family farms," what is often overlooked is that they can be one and the same. Farms are a high-risk business where liability can be an enormous concern. A corporate business structure is the logical choice for limiting liability. In some states there can be significant tax benefits to organizing a farm business as a corporation. Often farmers will use the corporate structure for estate planning purposes. Organizing a farm as a corporation does not make it any less of a family business, it does not make the safety net less important to the operation, and it does not mean that the operation is large or wealthy. It simply means that corporation status provides a business benefit to the family farm, which should not be penalized for making the logical and prudent business decision.

To give you an idea of how this change could negatively impact a family farm, let me walk you through a scenario. The actively engaged rules demand that every "shareholder" in a farm corporation prove that they are actively engaged in agriculture or risk having part of the safety net stripped from under them. Let's say that you operate a farm with two family members, and have chosen to organize your family farm as a corporation. One of your children would like to farm with you, but first, would like to go to college. You've known for some time that your child, I'll use "son" for this example, wants to farm with you, so you've been gifting small shares of the corporation to him for a few years. He now owns ten percent of the shares of the corporation. At 18, he moves away from the farm to go to college to earn a degree in agriculture business. But while away at school, his participation in the daily activities on the farm is hindered to a degree that he cannot prove his contributions are separate, distinct, documentable, identifiable and commensurate with his share of ownership—and he is deemed to be not actively engaged. Your family farm will lose up to ten percent of its safety net just because you want to pass the farm on to your child, who wants to go to college. Not only does this rule seem to contradict the ideal of passing farms down through the generations, but it can create a perverse incentive to discourage our children who want to be a part of the farm from continuing their education. Under this rule, farmers who would like to see their children take over the operation will be forced to choose between prudent estate planning and maintaining the farm safety net for their operation.

We have urged USDA to reconsider changes to the payment eligibility rule. While farmers will have to live with the new definition of actively engaged for 2009, we hope that more logical rules will prevail in 2010 and beyond.

In conclusion, we appreciate the hard work of this Committee and USDA to implement the farm safety net that is critical to America's farmers and ranchers. The 2008 Farm Bill was a hard-fought balance of interests that made meaningful reforms to farm programs and did so in a fiscally responsible manner. The bill works for America's farmers so that they can continue to provide the safest, most abundant and least expensive food supply in the world to American consumers.

However, the implementation process can be long and arduous, and we still have several challenges ahead. We look forward to working with both the Agriculture Committee and the Department of Agriculture to ensure that the best interests of farmers are of paramount importance during this implementation process.

I would like to thank you again for the opportunity to speak this morning, and I am happy to answer any questions you might have.

The CHAIRMAN Thank you, President Stallman. Mr. Litterer, please.

STATEMENT OF RON LITTERER, CHAIRMAN, NATIONAL CORN GROWERS ASSOCIATION; CORN, SOYBEAN, AND HOG PRODUCER, GREENE, IA

Mr. LITTERER. Good morning, Chairman Boswell, Ranking Member Moran, and Members of the Subcommittee, on behalf of the National Corn Growers Association, I thank you for this opportunity to discuss our members' views regarding implementation of the Food Conservation and Energy Act of 2008. I am pleased to add that the American Soybean Association has asked to be identified as supporting our statement today. First, I want to state that NCGA very much appreciates the Subcommittee's steadfast support of the corn industry. We also recognize your ongoing work. Exercising your oversight authority can go a long way toward ensuring an effective implementation of the 2008 Farm Bill. One of the signature reforms of the 2008 Farm Bill was the adoption of a revenue-based risk management program. This new farm safety net option, the Average Crop Revenue Election or ACRE represents a fundamental change in commodity programs.

In contrast to programs linked to set target prices and loan rates producers can now assess a new risk management tool that is tied to rolling market season average prices and state crop yields. ACRE is designed to deliver assistance when a farmer experiences a real loss in crop specific revenue. If properly implemented, ACRE can provide far more effective protection against volatile markets and production shortfalls not adequately addressed by crop insurance or disaster assistance. NCGA acknowledges this safety net option like any new program presents real administrative challenges for the Farm Service Agency. Complicating the task was the prior Administration's opposition to ACRE and resistance to expediting the rulemaking.

Despite multiple regulatory changes to the direct and countercyclical and ACRE programs, plans to move forward with national field training for FSA offices were brought to a halt. FSA offices were left with too many unanswered questions resulting in considerable confusion. Consequently, we were very pleased by Secretary Vilsack's decision to extend the sign-up period for DCP and ACRE until August 14. It was welcome news for producers who were short of time to adequately evaluate ACRE. Extension of the sign-up period also provided additional time for the FSA staff to develop additional information resources, as well as the handbook of enrollment procedures. To be sure, FSA staff has worked very hard to develop the software and online resources to help launch the program as quickly as possible. NCGA was disappointed though by the Department's decision not to proceed with field training that would have ensured a better exchange of information between FSA national, state and county employees on important questions regarding improving crop yields and landowner approvals.

Our informal surveys indicate that many FSA offices remain ill equipped to adequately explain the ACRE program. With an estimated 600,000 of potential 1.8 million direct countercyclical program and ACRE program contracts yet to be approved getting the producer enrollment and yield certifications completed by August 14 deadline presents an increasingly probability of workload issues for local FSA offices. Given the ACRE enrollment period has actu-

ally been open only since April 27, and growers have been encouraged by some economists to delay their decision, we have been urging USDA to raise a much greater awareness of this new risk management tool. We were pleased to learn yesterday the FSA is launching an educational campaign to better inform producers about the potential benefits of the ACRE program.

Another top priority for NCGA and ASA concerns the long delayed implementation of much needed changes to the On-Farm Storage Facility Loan Program. Two of the most important enhancements are the increase in the maximum loan limit to 500,000 from 100,000 and an extension of the maximum loan term from 7 to 12 years. Congress included these provisions in the 2008 Farm Bill with the intent of providing reasonably priced credit to help producers meet their increasing storage needs that are growing in part because trend line yields of crops such as soybeans and corn are increasing. However, many producers have been waiting for the final rules to be issued so they can apply for assistance under this program. With the new rules expected to be published no earlier than the middle of July most builders will be extremely pressed for time to complete these projects by fall harvest.

FSA announced at public meetings in both Ohio and Kansas in early April that the agency would be making available soon in their county offices a list of documentation that would be required to apply for the loan. Earlier distribution of this information would at least allow producers to begin gathering information and submitting applications for processing ahead of the rulemaking being finalized. I must emphasize that on-farm storage is very important to a farm operation's ability to successfully manage marketing of grain. Mr. Chairman, I want to thank you for this opportunity to appear before your Subcommittee and discuss NCGA's concerns regarding the implementation and progress of our two very important farm programs. We appreciate your consideration and look forward to working with you and your colleagues in the weeks and months ahead to help resolve these issues. Thank you.

[The prepared statement of Mr. Litterer follows:]

PREPARED STATEMENT OF RON LITTERER, CHAIRMAN, NATIONAL CORN GROWERS ASSOCIATION; CORN, SOYBEAN, AND HOG PRODUCER, GREENE, IA

Mr. Chairman, Ranking Member Moran and Members of the Subcommittee, on behalf of the National Corn Growers Association (NCGA), I thank you for this opportunity to share you with our members' observations and views regarding implementation of the Food, Conservation, and Energy Act of 2008. I am pleased to add that the American Soybean Association (ASA) has asked to be identified as supporting our statement today.

My name is Ron Litterer, currently serving as Chairman of NCGA. I am from Greene, Iowa where my wife and I raise corn, soybeans and hogs.

The National Corn Growers Associations represents more than 35,000 corn farmers from 48 states. NCGA also represents more than 300,000 farmers who contribute to corn check off programs and 26 affiliated state corn organizations across the nation for the purpose of creating new opportunities and markets for corn growers.

First, I want to state that NCGA very much appreciates this Subcommittee's steadfast support of the corn industry and your commitment to the passage and enactment of an adequately funded, well balanced and reform minded farm bill. We also recognize that the ongoing work by you and your staff in exercising your oversight authority can go a long way toward ensuring the Department of Agriculture meets its responsibilities in implementing the 2008 Farm Bill as intended by Congress.

One of the signature reforms in the 2008 Farm Bill long advocated by NCGA and ASA was the adoption of a revenue based risk management program that adjusts with annual changes in market prices and crop yields. This new option in the farm safety net, the Average Crop Revenue Election (ACRE), represents a fundamental change in U.S. commodity programs by reducing market distortions in planting decisions, cutting direct payments and lowering loan deficiency payments. In contrast to current programs that are linked to set target prices and loan rates, producers now have an opportunity to access a new risk management program that will vary with actual rolling market season average prices and state crop yields. Equally important, ACRE is designed to deliver assistance when a real loss in crop specific revenue is sustained on the farm. It is our view that ACRE, if properly implemented, can provide far more effective protection against volatile markets and production shortfalls not adequately addressed by either Federal crop insurance or the new disaster assistance program.

Because of ACRE's relative complexity compared to other programs and the inherent difficulty of introducing a significant reform along with other changes to the farm bill, NCGA acknowledges that this new option presents some real administrative challenges for the Farm Service Agency. Further complicating the task was the prior Administration's opposition to ACRE and its resistance to expedite the rule making as called for in the farm bill. Despite the multiple policy and regulatory changes called for in the Direct and Countercyclical (or DCP) and ACRE Program, plans to move forward with national field training for the state and county FSA offices and a roll out of program enrollment procedures were brought to a halt. By deferring key decisions on policy and planning to the new Administration, Farm Service Agency personnel in our county offices were left with too many unanswered questions and information gaps resulting in considerable confusion and in some cases, inaccuracies on how ACRE actually functions.

Consequently, we were very pleased by Secretary Vilsack's decision to extend the sign up period for the DCP as well as ACRE until August 14th. Given the delays in planting throughout much of the corn belt, it was welcome news for producers who were short on time to provide the required documents for the enrollment process and to adequately evaluate the ACRE program for their farm operations. Extension of the sign up period also provided additional time for the FSA to develop some additional information resources as well as the handbook of enrollment procedures for state and county offices. To be sure, the FSA staff has worked very hard to develop the software and on line resources to help launch the program as quickly as possible. NCGA was disappointed, though, by the Department's decision not to proceed with a scheduled national field training program that would have ensured a better exchange of information between FSA national staff and state employees on important questions of enrollment procedures, records for proving crop yields, landowner approvals and alternative learning resources for evaluating the ACRE program.

As an alternative to continuing with the countercyclical program, participation in ACRE does not come without trade-offs, including a 20 percent reduction in direct payments and a 30 percent reduction in the marketing loan rate. Informal surveys by our growers and other reports indicate that many FSA offices remain ill equipped and not properly trained to adequately explain the ACRE program to producers inquiring about their options. Some county offices have relied on the Extension Service to assist producers with evaluating ACRE, but these efforts can vary widely from one office to another.

With an estimated 600,000 of the potential 1.8 million DCP and ACRE program contracts yet to be approved, getting producer election, enrollment and yield certifications completed by the deadline of August 14 presents an increasing probability of workload issues for local FSA offices.

Should more producers and landowners take the time to understand the new ACRE provisions, the majority of the workload for the local FSA Offices is expected to take place in late July through the 14th of August. In fact, a number of agriculture economists have actually recommended that producers and landowners hold off making a decision on ACRE until later in the sign-up period to assess the latest market prices and how the specific crops in their state and farm are faring. Given the likelihood that most growers are likely to delay their decision late into the growing season, we are urging USDA to take advantage of this narrowing window of opportunity to raise a much greater awareness of this new risk management tool.

In anticipation of possible work load issues in county offices, we have proposed to the FSA a modification in sign up procedures that would enable producers and landowners interested in ACRE to file an "Intention" to Elect and Enroll into ACRE. This declaration of an intention would encourage producers and landowners to visit their local FSA Offices now and complete all the required paperwork well in ad-

vance of the August 14th deadline. If producers and landowners do not notify the FSA Office that they want to continue with ACRE, their ACRE election and enrollment would revert to DCP. By allowing producers to make a final decision on ACRE after submitting the initial enrollment documents, the sign-up process would have already been completed thereby alleviating long waiting lines at the FSA county office.

I also want to assure you that NCGA has and will continue our own education and communications programs in support of ACRE. One such program will be a free national webinar presented by DTN on July 1st featuring USDA's top experts on the ACRE program and one of the program's key architects, Dr. Carl Zulauf of Ohio State University. We are also working with our state associations to remind farmers of the sign up deadline and to encourage appointments with their county FSA offices to complete their enrollment for the DCP and ACRE programs.

Another top priority for NCGA and ASA concerns the long delayed implementation of much needed changes to the On-Farm (FSA) Storage Facility Loan Program. Two of the most important enhancements are the increase in the maximum loan limit to $500,000 from $100,000 and an extension of the maximum loan term from 7 to 12 years. As you know, Congress included these provisions in the 2008 Farm Bill with the intent of providing reasonably priced credit to help producers meet their increasing storage needs that are growing, in part, because trend-line yields of crops such as soybeans and corn are increasing. However, many producers have been waiting for the final rules to be issued on Section 1614 for a year now, so that they can apply for assistance under this program. The implementation must take place as quickly as possible for it to be used by producers to build storage facilities for this coming harvest season. With the new rules expected to be published no earlier than the middle of July, most builders will be extremely pressed for time to complete these projects by fall harvest.

FSA announced at public meetings in both Ohio and Kansas on the Programmatic Environmental Assessment in early April that the agency would be making available soon in their county offices a list of documentation that would be required to apply for the loan. Earlier distribution of this information would at least allow producers to begin gathering information and submitting applications for processing ahead of the rule being finalized. I must emphasize that on-farm storage is very important to a farm operation's ability to successfully manage the marketing of grain. Greater storage capacity simply provides growers more flexibility and choices in an increasingly volatile marketplace.

Mr. Chairman, I want to thank you again for this opportunity to appear before your Subcommittee and discuss NCGA's concerns regarding the implementation progress of two very important farm programs. We appreciate your consideration and look forward to working with you and your colleagues in the weeks and months ahead to help resolve these issues.

The CHAIRMAN Thank you. Mr. Hardwick.

STATEMENT OF JON W. "JAY" HARDWICK, CHAIRMAN, NATIONAL COTTON COUNCIL, NEWELLTON, LA

Mr. HARDWICK. Mr. Chairman, thank you for holding this important hearing and allowing us to provide our views on the implementation of the 2008 Farm Bill. My name is Jay Hardwick, and I own and operate a diversified farm based in Newellton, Louisiana, and I serve as Chairman of the National Cotton Council. I will focus on payment limitations and eligibility tests. My written testimony contains details I will not be able to cover in the time allotted. I am pleased that a number of national commodities and farm organizations listed in my statement contributed to and support my remarks. The 2008 Farm Bill made the most significant and far-reaching changes in the provisions in over 20 years. Among the many changes in the farm bill were the implementation and elimination of the three-entity rule and the new policy of direct attribution of benefits.

The shift to direct attribution could result in a 50 percent cut in the benefits in some circumstances. The new legislation finally removed the discrimination against spouses contained in the old

rules and significantly strengthened penalties for breaking the rules. The legislation eliminated limits on marketing loan gains which will result in more orderly marketing, better protection for producers in times of low prices, and significantly reduce the administrative burden on USDA. The former adjusted gross income test is replaced with two new eligibility tests based on a new untried definition of farm and non-farm income at much lower rates. The new income test also contains tough monitoring and enforcement provisions.

These modifications and revisions are a changed in and by themselves by the implementing of the regulations published December 26 of last year they went much further. The regulation created uncertainty and raised new questions during an already difficult adjustment process. Farmers are concerned. They are in the middle of an implementation process that many don't fully understand. I will touch on a few ways the implementing regulations are in our opinion inconsistent with the statute or are unclear. The 2008 law essentially made no changes to rules used to determine whether a program participant is actively engaged in farming. The new regulation, however, made changes in this area. In an effort to address passive stockholder contributions, the Department went way beyond the statute. The regulation ignores the statutory requirement that farming activities be judged on a collective basis, and for the first time requires every stockholder to make an individual contribution of labor or management.

That individual contribution must be regular, identifiable, documentable, separate, and distinct, whatever that means. I am concerned that FSA could offer a variety of interpretations as to what constitutes separate and distinct contributions of labor or management by corporate shareholders, yet program eligibility and compliance determination hinge on FSA's interpretations. Unfortunately, the same separate, independent, and distinct requirement is applied to partnerships. Other specific concerns include new requirements that risk of loss be commensurate. There are problematic new rules on financing and new rules restricting the ability of farming operations to reorganize to comply with the new rules. Many operations had already begun decision-making for the 2009 crops without knowing the USDA would evaluate those decisions using new criteria. Congressional efforts to end spousal discrimination are being hampered by inconsistencies between the statute, the regulations, the 4–PL Handbook, and the notices.

Mr. Chairman, while we have identified numerous issues that need correcting, we commend FSA personnel for their dedication and work under severe time constraints. A significant source of confusion and inconsistencies will be eliminated if the regulations are revised to eliminate the separate and distinct requirements for corporations, partnerships, and LSEs to form the at risk provisions to the existing statute and to recast the spousal eligibility rules. We have additional concerns regarding the income test, particularly the definition of *farm* and *non-farm income*, but I must refer you to the written testimony on those points.

I want to make one important point in closing. There are significant uncertainties about the many aspects of the new rules. Given these uncertainties and the lack of clear direction, it would be pat-

ently unfair or unwarranted if oversight agencies rake across the landscape sometime in 2010 and attempt to claim lack of enforcement by USDA or claim widespread program abuse. Again, thank you for allowing me to present our views and concerns.

[The prepared statement of Mr. Hardwick follows:]

PREPARED STATEMENT OF JON W. "JAY" HARDWICK, CHAIRMAN, NATIONAL COTTON COUNCIL, NEWELLTON, LA

Mr. Chairman, thank you for holding this important hearing and allowing us to provide our views on USDA's implementation of the 2008 farm law. My name is Jay Hardwick. I own and operate a diversified farming operation based in Newellton, Louisiana. I am serving as Chairman of the National Cotton Council. I am pleased to note that in keeping with your desire that witnesses not re-plow the same ground the USA Rice Federation, U.S. Rice Producers Association, American Soybean Association, National Corn Growers Association, National Association of Wheat Growers, Southern Peanut Farmers Federation and American Farm Bureau Federation have all provided input for my statement and have associated their organizations with my remarks.

Mr. Chairman, the focus of my remarks will be on payment limitations and eligibility because these provisions have a significant impact on cotton, rice and peanut operations. However, I also believe the elimination of the three-entity rule and the new income tests will have a far greater impact on grain, oilseed and specialty crop operations than may be understood.

Mr. Chairman, I request that the documents accompanying my written statement including the letter dated September 24 signed by 62 Members of the House; the letter dated March 13 signed by 68 Members; and, the letter dated April 6 signed by a variety of agriculture organizations, all urging prompt implementation of the statute consistent with the intent, be made a part of the record. I also request that the Council's comments on the interim, final rule implementing the payment limitation and adjusted gross income provisions and some of the forms required to be completed by program applicants also be made part of the record.

The provisions of the 2008 farm law made the most significant and far-reaching changes in payment limitations and program eligibility provisions in over 20 years. Yet the rhetoric and the budget proposals of the new Administration consistently gloss over the sweeping reforms in the new farm law and seem unconcerned about discovering the actual impact of those changes. Even though USDA–ERS analysis has concluded program benefits have not been a primary influence in increasing farm size, critics continue to insist that farm program payments are causing farm consolidation. ERS analysis also shows that farm programs contributed less than 8% of increased value of farmland while low interest rates and non-agricultural factors played a far more significant role. Given this analysis, it seems clear that the continued effort to revise further the significant changes in the 2008 law does not reflect concerns about concentration but is really about moving funds away from production agriculture.

As a quick reminder, the new farm law changed a fundamental premise of payment limitations by replacing the focus on farm entities with a policy of direct attribution of benefits. It eliminated the three-entity rule. It eliminated spousal discrimination. The $65,000 cumulative limit on countercyclical and ACRE payments and the $40,000 cumulative limit on direct payments as well as separate limits for peanuts were retained. The new law eliminated the limit on marketing loan gains, which will promote more orderly marketing, better protect producers in times of low prices, and importantly will reduce the administrative burden on USDA's Farm Service Agency. The new legislation strengthens penalties for knowingly breaking the rules.

There are three new eligibility tests based on income.

- If an individual's or entity's 3 year average adjusted gross farm income exceeds $750,000 they are ineligible for direct payments;
- If an individual's or entity's 3 year average adjusted gross **non**-farm income exceeds $500,000, they receive no program benefits; and
- If their 3 year average adjusted gross non-farm income is greater than $1 million and less than 66⅔% of their 3 year average adjusted gross income is from non-farm sources, they are ineligible for conservation programs.

These new income tests also contain tough monitoring and enforcement provisions, including the requirement that USDA develop a statistically valid monitoring

procedure to enhance enforcement. To any reasonably objective observer, these far-reaching modifications and revisions are very significant changes yet we do not know their full impact.

We believe that in certain circumstances, the elimination of the three-entity rule could result in a 50% cut in benefits. However, in spite of the vast array of data available on U.S. farming operations, neither the Council nor USDA can accurately predict how many operations will be affected or to what extent they will be affected. I do know from conversations with other farmers, attorneys and CPA's that the new forms and requirements have forced many farmers to review their day-to-day operations. Under the new regulations, even long-standing, simple partnerships must be concerned with how they make operational decisions. It has been a struggle for farms to comply with the new requirements and, even so, we know that program benefits are going to be reduced or denied to a number of operations. But until sign-up is complete, we won't know the extent of the impact—just that it is significant.

While the statute included far-reaching changes that would have significant, uncertain impacts, the implementing regulations went even further, making significant alterations in areas of the law Congress did not intend to be changed.

The interim, final regulation was published late, December 26, 2008. It made sweeping changes in areas that were not amended in the farm bill. It also limited the impact of some changes that were made by Congress in the farm bill, particularly the spousal eligibility provision.

I have provided you with a copy of the National Cotton Council's comments on the proposed rule. A few of our concerns were addressed by provisions in the Handbook, known as 4–PL, published in late spring, and subsequent FSA Notices. Today I will highlight only key provisions which we continue to believe are inconsistent with the statute or are unclear.

Even though Congress made no substantive changes to existing rules governing whether a program participant is actively engaged in farming, USDA ignored this and promulgated problematic new rules in this area.

For example, although the statute continues to require that contributions to a farming operation by shareholders in corporations be measured on a collective basis, the interim regulations, for the first time, require that every shareholder make an *individual* contribution of labor or management and the contribution be regular, identifiable, documentable, separate and distinct.

Mr. Chairman, I understand USDA's concern about "passive" shareholders. However, the addition of the new requirements regarding stockholders goes well beyond this concern and certainly beyond the intent of the statute. The new requirements are vague and, in many cases, the reason for the new requirements is difficult to understand. I believe these provisions will be a continual cause of confusion and uncertainty for farmers, because if you ask ten FSA employees to explain what constitutes separate and distinct contributions of labor or management, you will get ten different answers. In the world created in these regulations, corporations cannot take satisfactory action as a Board or as a collective meeting of stockholders. Instead, each stockholder must take some independent and distinct action, even though corporations virtually never authorize independent shareholder action.

When compliance audits are conducted, there will be even more confusion because the interpretations will vary. Worse, since the regulations were not published until December 2008 and the Handbook and clarifying Notices were still being published in the Spring, many operations had already begun making their plans for the 2009 crops. They may have arranged financing, leased land and purchased inputs. These farms had no idea that many of their operational decisions would have to be made by each shareholder acting independently, separately and distinctly.

Incredibly, this same, "separate, independent and distinct" requirement is also being applied to partnerships, calling into question whether partners are actually engaged in a farming operation if they make their decisions jointly.

The regulation also adds a new requirement that contributions to the farming operation must be at risk for loss and that loss be commensurate with the claimed share of the farming operation. This new regulatory addition could mean that in the case of a father who has farmed for years and accumulated a significant net worth, a 50/50 partnership with his son or daughter who has just begun farming may not be eligible for benefits because the son or daughter does not have substantial wealth available to lose. This is another example of a new administrative requirement that doesn't make sense and is not supported by the statute.

We are also concerned by the new definition of substantive change. While the statute did not waive the substantive change rule to allow operations to adjust their organizations to comply with these sweeping new regulations, it certainly did not make it tougher for farms to comply. Previously, complying with this rule meant adding a family member or increasing or decreasing the land farmed by the oper-

ation by at least 20%. The new regulations, however, raised the bar on substantive change as well. Under the new definition, an operation must increase or decrease its ***base*** acres by at least 20%, and if the change results in more than one additional payment the plan must be approved at the state level. This is another example where the regulations exceeded the statute, where they force significant, impracticable changes in farming operations, and then make those changes more difficult than ever to accomplish.

We are also concerned by the inconsistency between the statute, the regulation and the Handbook in implementing the new spousal eligibility provision. Congress clearly intended that when a husband and wife are farming together in the same operation, one spouse may make all required contributions of labor or management on behalf of the other spouse. However, USDA has imposed severe limitations on this rule in the regulations and the Handbook. These limitations will unduly restrict the ability of operations involving spouses to choose how they use corporations and limited liability companies to limit their personal and their family's liability.

We believe this important provision should be implemented in a manner that better carries out Congress' intent by providing husbands and wives the flexibility to use the same liability-limiting business arrangements as are used by all other types of businesses.

There are other portions of the regulation that are problematic, including restrictions on financing and other highly technical matters. These issues are discussed in our detailed comments on the rule. We strongly recommend the interim regulation be amended to eliminate the changes in the definition of actively engaged and other provisions not contemplated by the 2008 farm law amendments.

Furthermore, USDA has made the payment limitations and adjusted gross income requirements a moving target. The farm bill was enacted on June 18, 2008. However, USDA did not publish interim regulations on payment limits and income tests until December and did not issue its new payment limitations handbook, 4–PL, until **February** of this year. The new 902 forms, first issued in December, were revised in April of this year, and 4–PL was substantially revised in May. Each of these revisions made substantive changes to the payment limitations and adjusted gross income requirements. The requirements are still in flux, as USDA continues to send out additional "guidance" memoranda to its state and county offices making further "clarifications" to the rules, some of which run contrary to earlier clarifications. Even with the assistance of lawyers and accountants, farmers cannot be certain what rules actually apply this week and whether those same rules will apply next week.

The delay in publishing the regulation, the Handbook and Notices and in training FSA personnel has created a catch-22. Unfortunately, at this late date, correcting the regulation for the 2009 crop sign-up would only add further confusion and delays in approving farm plans and providing program benefits. While adjustments effective for the 2010 crop subject operations to three sets of rules over 3 crop years, it is our opinion that USDA should correct those areas where they have overreached the intent of the 2008 farm law.

The new farm law also creates three new income tests used to determine eligibility. Previously, the test was based on adjusted gross income or an equivalent measure which is relatively easy for growers to document and FSA to audit. The new tests are based on average adjusted farm and non-farm income. Rather than check a specific line on an income tax return, growers now have to designate all income as farm or non-farm to determine eligibility. Recognizing farm income is more than just the income listed on a Schedule F, Congress provided some direction in the statute by defining certain sources as farm income and providing the Secretary authority to define other sources as appropriate. We have been disappointed that USDA did not do more to obtain input from farmers and accountants concerning how best to designate sources of income as farm and non-farm. USDA did not ask for recommendations concerning how to define certain sources of income for the purpose of applying the new tests thus leaving farmers with the task of interpreting the appropriate designations of income. These designations are critically important because they determine eligibility for all program benefits.

USDA provides another example of regulatory overreaching and inconsistency between the regulations and other implementation materials regarding the income limitations. While the legislation and the 926 Form being used by CCC require a person to provide to the Secretary either a certification of average income or information and documentation regarding average income at least once every 3 years, the regulations allow the Secretary to require such certification every year and ignore the documentation option. We urge USDA to be consistent by changing the regulations to include the option to provide sufficient documentation as an alternative

to third-party certifications and to clarify that such certification or documentation must occur only every 3 years.

We were surprised and concerned to learn from a March 19 press release that USDA has entered into an agreement with the IRS to share data and further that every program participant must file a separate form authorizing the IRS to release data to USDA or the producer will be ineligible for benefits even though virtually identical language is on an existing USDA form (CCC–926). While we have been assured that the IRS will not provide taxpayer information to USDA, we have been advised that USDA will provide taxpayer ID's of all program participants and ask IRS to review records to identify those ID's who may have income above the relevant income test levels. However, we do not know what criteria USDA has asked IRS to use, nor have we been advised what procedure will be followed to determine compliance once a taxpayer's ID is identified for further scrutiny. We also have no assurance that if the IRS—using USDA's criteria—identifies an ID for further review, even though they may ultimately be determined to be in compliance, that the list won't be subject to a Freedom of Information request. Furthermore, given the expanded definition of farm income for payment eligibility purposes *versus* tax definitions, a review by IRS will have little relevance in indicating eligibility.

Mr. Chairman, growers are required by the law to certify they are in compliance with the income tests and eligible for program benefits. There are strict penalties for providing false or incorrect information. The GAO report that is cited by USDA as the impetus for this IRS review indicated that 2,700 of the 1.8 million program participants may have erroneously received $49 million in payments over 4 years during which farm program payments totaled $63.8 billion. To put that in perspective, the erroneous payments amounted to less than 1/10 of one percent of total payments. Certainly, USDA should vigorously enforce the rules, but at some point the costs, both administratively and to an individual's privacy, are so excessive compared to the return that they should be reconsidered.

Finally, allow me to address the forms necessary to apply for program benefits. They are attached to my written statement. Clearly, early versions overreached by requesting information that was difficult if not impossible for farmers to provide and, in some cases, that was not relevant or necessary to determine eligibility. I understand some forms have been revised, and I urge FSA to continue to review and modify the forms to make them as user-friendly as possible. Even the smallest operation must certify income and file a detailed farm plan, so forms should be designed for them as well as for the most complex operations. The 2008 law was not entitled the "Full Employment for Lawyers Act."

Mr. Chairman, while we have many issues that need correcting, we nevertheless commend FSA personnel for their dedication and work under severe time constraints. We believe a significant source of confusion and cause of inconsistent application of the rules will be eliminated if the interim regulation is revised to eliminate the requirement that contributions be made on a separate and distinct basis and to conform the "at risk" provisions to the existing statute. We believe the provisions related to spousal eligibility should be recast as straight-forward as intended. We urge FSA to continue to review all forms to simplify them.

We also urge USDA to continually monitor sources of income to determine if they could be considered farm income and to proceed cautiously and to seek stakeholder input before finalizing the data exchange and review process with the IRS.

Mr. Chairman, the 2008 farm law made a number of historic reforms in payment eligibility provisions. Congress and stakeholders have urged USDA to implement the statute consistent with intent. We are still working through USDA's own rules and still coming to grips with the 2008 law's sweeping changes. This is not the time to make further, unwarranted changes, but it is time for USDA to correct the areas where they have implemented onerous changes that were not authorized by the new farm law.

I want to be clear, however, that there are significant uncertainties among producers, lawyers, accountants and even USDA program specialists about many critical aspects of these new rules. I have been told there are uncertainties regarding the leasing of land and equipment, uncertainties regarding the sources of financing, in addition to some of the problems I have already noted. Washington, DC, program specialists have not been able to answer all of the questions being raised. Given these uncertainties and the lack of clear direction, it would be patently unfair and unwarranted if oversight agencies rake across this landscape sometime in 2010 in an attempt to claim lack of enforcement by USDA or to claim widespread program abuses.

Again, thank you for allowing me to present our views and concerns.

ATTACHMENT 1

This form is available electronically.

CCC-901
(04-01-09)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

MEMBER'S INFORMATION
2009 and Subsequent Years

1. County

2. State

3. Program Year

NOTE: *The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation and Energy Act of 2008 (Pub. L 110-246). Additionally, the authority for requesting this information is for 7 CFR Part 1400. The information is necessary for CCC to assist in determining eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation and Energy Act or 1974, the E-Government Act of 2002, and related authorities.*

This information collection is exempted from the Paperwork Reduction Act, as it is required for the administration of the Food, Conservation, and Energy Act of 2006 (Pub. L. 110-246, Title I, Subtitle F – Administration). The provisions of criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***

PART A - For each individual or entity who is a member of this entity, list the member's name, social security/employer identification number, address and percentage share of ownership. If a member has both types of identification numbers, list both.

Name of Legal Entity _____

1. Member's Name	2. SSN or Tax ID Number *(Last 4 digits if already on file)*	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? *(Yes or No)*
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO

PART B - **Embedded Entities:** For any member listed in Part A, who is an entity, list such embedded entity's name and list the requested, information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part A is an entity, provide the requested information for each entity on supplemental sheets.

Name of Embedded Legal Entity _____

1. Member's Name	2. SSN or Tax ID Number *(Last 4 digits if already on file)*	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? *(Yes or No)*
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

CCC-901 (04-01-09) **Name of Entity (as identified in Part A):** Page 2 of 2

PART C - Embedded Entities: For any member listed in Part B, who is an entity, list such embedded entity's name and list the requested, information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part B is an entity, provide the requested information for each entity on supplemental sheets.

Name of Embedded Legal Entity _____

1. Member's Name	2. SSN or Tax ID Number. *(Last 4 digits if already on file)*	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? *(Yes or No)*
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO

PART D - Embedded Entities: For any member listed in Part C, who is an entity, list such embedded entity's name and list the information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part C is an entity, provide the requested information for each entity on supplemental sheets.

Name of Embedded Legal Entity _____

1. Member's Name	2. SSN or Tax ID Number. *(Last 4 digits if already on file)*	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? *(Yes or No)*
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO
			%	☐ YES ☐ NO

Part E. Minor Members or Shareholders – For any Member or Shareholder who is a minor, provide the following: ☐ N/A

1. Minor's Name	2. Date of Birth	3. Parent's or Guardian's Name	4. Parent's or Guardian's Address	5. Parent or Guardian's SSN or Tax ID Number *(Last 4 digits if already on file)*

6. Separate Status of Minors

(a) Is any minor a producer on a farm in which the parent or guardian has no interest? ☐ YES ☐ NO

(b) Does any minor maintain a separate household from the parent or guardian and personally carry out farming Activities with respect to the minor's farming operation, including maintaining separate accounting? ☐ YES ☐ NO

(c) Does any minor who is represented by a court-appointed guardian or conservator responsible for the minor 1) live in a household other than the parents' household(s), and 2) have a vested ownership in the farm? ☐ YES ☐ NO

(d) If any minor with an interest in this farming operation can answer "YES" to Items 6(a)-6(c), list that minor's name:

PART F- CERTIFICATION - By Signing:

- I certify that I have signature authority for the entity identified in Part A and all information entered on this document is true and correct
- I understand that furnishing incorrect information will result in forfeiture of payments and benefits.
- I will timely provide written notification to the Farm Service Agency committees for the county and State listed on this form of any changes in the information provided.

1. Representative's Signature (By)	2. Title/Relationship of Individual Signing in the Representative	3. Date (MM-DD-YYYY)

ATTACHMENT 2

NOTE: THERE IS ALSO A NEW SHORT FORM FOR INDIVIDUALS

This form is available electronically.

(See Page 4 for Privacy Act Statement)

CCC-902I (03-26-09)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

FARM OPERATING PLAN FOR AN INDIVIDUAL
2009 and Subsequent Program Years

For "actively engaged in farming" and other payment eligibility and limitation determinations.

1. County	3. Program Year
2. State	

*This form is to be completed by, or on behalf of, an individual who is seeking benefits from the Farm Service Agency (FSA) as an **individual** (and not as part of an entity) under one or more programs that are subject to the regulations at 7 CFR Part 1400. This form collects farming and other information about the individual who receives program benefits **directly** using the social security number identified in Part A. This form also collects information about entities engaged in farming in which the individual has an interest. Such entities must complete a CCC-902E if they are requesting program benefits. Payment eligibility for the individual is based upon the contribution level of certain inputs to a farming operation such as land, capital, equipment, labor, and management by the individual identified in Part A. The information on this form will be used by FSA to determine payment eligibility and limitation of payments by direct attribution.*

PART A – BASIC INFORMATION

1. Individual 's Name and Address *(Include Zip Code)*	2. Social Security Number *(If the social security number or taxpayer ID number is on file, only the last 4 digits are required)*

PART B - ADDITIONAL INFORMATION

1. Is this individual a U.S. citizen?	2. Is this individual an alien lawfully admitted into the U.S.?	3. FOR COUNTY FSA USE ONLY *(Was a Resident Alien Card, I-551 shown?)*
☐ YES. Go to Item 4A ☐ NO. Go to Item 2	☐ YES, must present a Resident Alien Card (I-551). ☐ NO	☐ YES ☐ NO

MINORS

4A. Is this individual under 18 years of age as of April 1 of the program year that is specified in Item 3? ☐ NO. Go to Item 7 ☐ YES, continue with Item 4B	4B. Enter Date of Birth *(MM-DD-YYYY)*

5. Enter the name, address, and social security number of parent or guardian:

A. Parent's or Guardian's Name	B. Parent's or Guardian's Address	C. Social Security Number of Parent or Guardian *(If the social security number or taxpayer ID number is on file, only the last 4 digits are required)*

D. Does this individual maintain a separate household from parent or guardian? ☐ **YES** ☐ **NO**

6. List the direct and indirect interests in all farming operations of this individual's parents or guardians:

A. Parent's or Guardian's Name	B. Name of Farming Interest	C. Tax ID Number of Farming Interest *(If the social security number or taxpayer ID number is on file, only the last 4 digits are required)*	D. County and State Where Farming Interest is Located

7. Other Farming Interests: Complete this item for all farming entities, including joint operations, in which the individual identified in Part A has an interest, and for any farming interests of a spouse or minor child. ☐ N/A, Go to Part C.

A. Other Farming Interests	B. Whose Farming Interest?			C. Tax ID Number of Farming Interest *(If the social security number or taxpayer ID number is on file only the last four digits are required)*	D. County and State Where Farming Interest is Located
	Self	Spouse	Minor Child		

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CCC-902I (03-26-09) **Name of Individual (as identified in Part A):** _____

INSTRUCTIONS FOR PARTS C THROUGH H. Only include information for the individual identified in Part A. Do not include information for any farming interests listed in Part B, Item 7.

PART C - LAND

1. **Land:** Enter the following information for ALL land farmed by the individual identified in Part A and not as part of an entity. ***If land is cash leased from an individual or entity with an interest in the crop or crop proceeds, include the rental rate in $/acre Column F; otherwise enter "cash."***

A. Farm No.	B. Location *(County and State)*	C. Check As Applicable			D. Name of Individual or Entity Whom Land is Leased to and/or From *(Includes names of landowners and landlords)*	E. Acres Owned or Leased	F. Rental Rate $ per Acre or % of Crop Share	G. Check here if same land interest was held last year
		Owned	Leased To	Leased From				
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐

For additional space for land, complete CCC-902 Continuation and attach to this form. Check here ☐ if attached.

PART D – CAPITAL SOURCES and USES

1. Indicate the source of all farming capital for the individual identified in Part A for the farms listed in Part C. *(Check all that apply.)*

☐ Non-borrowed capital ☐ Private loans/credit ☐ FSA program payments
☐ Commercial loans/credit ☐ Other: _____

2. Will contributions of capital, farming equipment or land be acquired as a result of a loan or credit arrangement?

☐ YES go to Item 3 ☐ NO go to Part E

3. Will such loan or credit be acquired from, guaranteed by, co-signed by, or secured by another individual or entity that has an interest in the farming operation identified in Part A? *(Such interest may be as a landowner or another tenant.)*

☐ YES. Complete Items 3A through 3E ☐ NO. Go to Part E.

A. Type of Contribution	B. Name of Loan or Credit Source	C. Guarantor's Name	D. Credit Source or Guarantor's Affiliation or Interest in the Farming Operation	E. Percent of Total Capital
				%
				%

If all land listed in Part C is owned by the individual identified in Part A, then proceed directly to Part I.

PART E - EQUIPMENT *(All percentages are based on annual rental values.)*

1. **Owned Equipment**: Enter the percent of ALL equipment owned by the individual identified in Part A that will be used on the farms listed in Part C? If the individual specified in Part A does not own any of the equipment used in the farming operation, enter 0%. _____%

2. **Leased Equipment**: Enter the following information for ALL leased equipment to be used by the individual identified in Part A on the farms listed in Part C. If leased equipment is not used in this farming operation, enter 0%.

A. Percent of Total Equipment Used by the Individual	B. Name of Party/Entity Equipment is Leased From	C. Type of Equipment Leased	D. Does the Party/Entity the equipment is leased from have an interest in this farming operation?
%			☐ YES ☐ NO
%			☐ YES ☐ NO
%			☐ YES ☐ NO

3. **Lease agreements:** If Item 2D is "YES," copies of lease agreement and documentation may be required for compliance purposes. GO TO Part F.

CCC-902I (03-26-09) **Name of Individual (as identified in Part A):** _____ Page 3 of 4

PART F - CUSTOM SERVICES

1. Will custom services be utilized by the individual identified in Part A on the farms listed in Part C?
   ☐ NO. Go to Part G ☐ YES, complete Items 1A through 1D of this Part.

A. Type of Services	B. Farm Number(s)	C. Number of Acres	D. Name of Provider

PART G – LABOR

For the farms listed in Part C, enter the information for contributions of active personal labor which will be provided by the individual identified in Part A, hired laborers; or by others:

Type	Amount
1. **Active personal labor**. Enter the percentage or hours to be provided by the individual identified in Part A. If the individual identified in Part A performs 1,000 or more hours of labor for this farming operation, enter "1,000" hours.	%
	hrs
2. **Hired labor**. Enter the percentage or hours of labor that will be hired.	%
	hrs
A. Will any of the hired labor originate from the same source as leased equipment shown in Part E? ☐ NO ☐ YES *If "YES", acceptable documentation to prove such relationship may be required for compliance purposes.*	
B. Will any of the hired labor be included in the custom farming services shown in Part F? ☐ NO ☐ YES *If "YES", acceptable documentation to prove such relationship may be required for compliance purposes.*	
3. **Other labor.** Enter the percentage of labor to be donated by family members or others. *(No payment will be owed).*	%

PART H – MANAGEMENT *(The total percentage shown in Items 1 through 3 must equal 100%)*

For the farms listed in Part C, enter the estimated percent of the individual's total management responsibility and the type of managerial duties required which will be provided by the individual identified in Part A, by hired persons or entities, or by others who are not hired.

1. **Active personal management:**
   A. Enter the estimated percent of the active personal management to be provided by the individual identified in Part A: _____ %
   B. List the type of managerial duties/activities to be personally performed by the individual identified in Part A:

2. **Hired management:**
   A. Enter the estimated percent of hired management: _____ %
   B. Describe any paid management services provided by someone other than the individual identified in Part A:

3. **Other management:**
   A. Enter the estimated percent of other management: _____ %
   B. Describe any non-compensated management duties/activities provided by someone other than the individual identified in Part A:

PART I – CERTIFICATION

I certify that all the information entered on this document and any supporting documentation is true and correct. I understand furnishing incorrect information will result in forfeiture of payments and may result in the assessment of a penalty. I will timely provide written notification to the Farm Service Agency committees for the county and State listed on this form of any changes in this farming operation.
By signing this form, I acknowledge that:

- *all supporting documentation has been submitted as required.*
- *I have read and understand all definitions and requirements on Page 4.*
- *all information contained on this form will be considered in effect continuously unless changes or revisions are submitted.*
- *it is my responsibility to timely notify FSA in writing of any changes in the farming, ranching or forestry operation, or financial status that may affect these representations.*
- *evidence such as tax records, certified public accountant's certification, or other documentation may be required to validate these representations and that I will take all necessary actions to provide such materials to FSA if requested.*

1. Signature (By)	**2.** Title/Relationship of the Individual Signing in Representative Capacity	3. Date *(MM-DD-YYYY)*

DEFINITIONS

The following definitions apply to Form CCC-902I.

1. **ACTIVELY ENGAGED IN FARMING** – means providing both: 1) significant contributions of capital, equipment, or land, or combination thereof to the farming operation; and 2) significant contributions of active personal labor or active personal management, or a combination thereof, to the farming operation as described. Further, for a person or legal entity to be considered actively engaged in farming for program payment purposes, the contributions of the person or legal entity must be at-risk and commensurate with the person's or legal entity's claimed share of the profit and loss of the farming operation. Failure to meet these requirements will result in the determination of ineligibility for payments under programs specified in 7 CFR Part 1400.

2. **INTEREST IN A FARMING OPERATION** – a person or legal entity is considered to have an interest in a particular farming operation if the person or legal entity owns or rents land to or from that farming operation; has an interest in the agricultural commodities produced on the operation; or is a member of a joint operation that either owns or rents land to or from the farming operation, or has an interest in the agricultural commodities produced on that operation.

3. **JOINT OPERATION** - is a general partnership, joint venture, or similar organization.

4. **PERSON** – is a natural person (an individual) and does not include a legal entity.

5. **ACTIVE PERSONAL LABOR** – a person is considered to be providing active personal labor with respect to a farming operation if that person is directly and personally providing physical activities necessary to conduct the farming operation, including land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities. Other qualifying physical activities include establishing and maintaining conserving covers and those physical activities necessary for livestock production for the farming operation.

6. **ACTIVE PERSONAL MANAGEMENT** – a person is considered to be providing active personal management with respect to a farming operation if that person is directly and personally providing the general supervision and direction of activities and labor involved in the farming operation; or providing services (whether performed on-site or off-site) reasonably related and necessary to the farming operation.

7. **CAPITAL** – with respect to a farming operation is the funding provided by a person or legal entity to the farming operation in order for such operation to conduct farming activities. To be considered a countable contribution for a person or legal entity, the capital must have been derived from a fund or account separate and distinct from that of any other person or entity involved in such operation. Countable capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct non-borrowed (out-of-pocket) input of a specified sum or an amount borrowed by the person or entity. Capital does not include advance program payments.

8. **CONTRIBUTION** – with respect to a farming operation is the provision of land, capital or equipment assets, and providing active personal labor, or active personal management to the farming operation in exchange for, or the expectation of, deriving benefits based solely on the success of the farming operation.

9. **CUSTOM SERVICES** – with respect to a farming operation is the hiring of a contractor or vendor that is in the business of providing such specialized services to perform services for the farming operation in exchange for the payment of a fee for such services performed.

10. **ENTITY** - is a corporation, joint stock company, limited liability company, association, limited partnership, limited liability partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

11. **EQUIPMENT** – with respect to a farming operation is the machinery and implements needed to conduct activities of the farming operation including machinery and implements used for land preparation, planting, cultivating, harvesting or marketing crops. Equipment also includes machinery and implements needed to establish and maintain conserving covers.

12. **FAMILY MEMBER** – a person is considered to be a family member of another person in the farming operation of that person is related to the other as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.

13. **FARMING OPERATION** - is a business enterprise engaged in the production of agricultural products which is operated by a person or a formal or informal entity which is eligible to receive payments, directly or indirectly.

14. **LAND** – with a respect to a contribution to a farming operation is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program for which payments or benefits are sought.

15. **SUPPORTING DOCUMENTATION** – is any information that supports the relevant representations made such as, but not limited to: articles of incorporation; corporate meeting minutes; stock certificates; organizational papers; trust agreement; last will or testament or a deceased individual; affidavit of heirship approved by Office of General Counsel; partnership agreement; property lease agreement; purchase agreement; land deed; lending security agreement; and financial statement.

16. All other terms utilized in this form shall be defined pursuant to 7 CFR Part 1400.

NOTE: *The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation, and Energy Act of 2008 (Pub. L 110-246). Additionally, the authority for requesting this information is 7 CFR Part 1400 and 7 CFR Part 1410. The information requested is necessary for CCC to assist in determining eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation, and Energy Act, the Privacy Act or 1974, the E-Government Act of 2002, and related authorities.*

This information collection is exempted from the Paperwork Reduction Act, as is required for the administration of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, Title I, Subtitle F – Administration). The provisions of criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***

ATTACHMENT 3

This form is available electronically.

CCC-902 Continuation
(12-22-08)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

1. COUNTY
2. STATE
3. PROGRAM YEAR
4. PARTICIPANT'S NAME

CONTINUATION SHEET FOR LEASED OR OWNED LAND

ATTACH TO FORM **CCC-902I** ☐ or **CCC902E** ☐

NOTE: *The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation and Energy Act of 2008 (Pub. L 110-246). Additionally, the authority for requesting this information is for 7 CFR Part 1410. The information is necessary for CCC to assist in determining eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation and Energy Act or 1974, the E-Government Act of 2002, and related authorities. This information collection is exempted from the Paperwork Reduction Act, as it is required for the administration of the Food, Conservation, and Energy Act of 2006 (Pub. L. 110-246, Title I, Subtitle F – Administration). The provisions of criminal and civil fraud statutes may be applicable to the information provided.* ***RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***

PART A - LAND

Enter the following information for ALL land you own and/or lease. If ALL land in this farming operation is owned and operated by you, enter the farm number. County and State, check "Owned," and enter the cropland acres. If this CCC-902 Continuation is attached to CCC-902E, for a joint operation, indicate whether the land is leased or contributed by the joint operation or a member.

1. FARM NO.	2. COUNTY(IES)	3. CHECK ONE			4. NAME OF PERSON OR LEGAL ENTITY WHOM LAND IS LEASED TO AND/OR FROM	5. ACRES	6. RENTAL RATE(S) $ PER ACRE OR % CROP SHARE	7. CHECK IF YOU HAD THE SAME LAND INTEREST LAST YEAR
		OWNED	LEASED TO	LEASED FROM				
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
		☐	☐	☐				☐
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		☐	☐	☐				☐
		☐	☐	☐				☐

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ATTACHMENT 4

This form is available electronically.

CCC-926 (11-20-08) **U.S. DEPARTMENT OF AGRICULTURE** Commodity Credit Corporation **AVERAGE ADJUSTED GROSS INCOME (AGI) STATEMENT**	1. County FSA Office or Service Center Address *(Include Zip Code)*

NOTE: *The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation, and Energy Act of 2008 (Pub. L 110-246). Additionally, the authority for requesting this information is 7 CFR Part 1400 and 7 CFR Part 1410. The information requested is necessary for CCC to assist in determining eligibility for program benefits. Information about the average Adjusted Gross Income limitations can be found in the regulations at 7 CFR Part 1400. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation, and Energy Act, the Privacy Act or 1974, the E-Government Act of 2002, and related authorities. This information collection is exempted from the Paperwork Reduction Act, as it is required for the administration of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, Title I, Subtitle F – Administration). The provisions of criminal and civil fraud statutes may be applicable to the information provided.* ***RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***

2. Name and Address of Person or Legal Entity *(Include Zip Code)*	3. Identification Number *(Last 4 digits of SSN or Tax ID No.)*

NOTE: Please read and complete all items. Definitions of terms such as "nonfarm income" and "farm income" are contained on Page 2.

CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME

4. Select the program year for which program benefits are requested *(Check only one)*.

A. ☐ **2009**	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2007, 2006 and 2005.	**C.** ☐ **2011**	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.
B. ☐ **2010**	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007, and 2006.	**D.** ☐ **2012**	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.

5. Was the average adjusted gross **nonfarm income $500,000 or less** for the applicable 3-year period for the program year selected in Item 4?

A. ☐ **YES.** B. ☐ **NO**

6. Was the average adjusted gross **farm income $750,000 or less** for the applicable 3-year period for the program year selected in Item 4?

A. ☐ **YES.** **B.** ☐ **NO**

7. Was the average adjusted gross **nonfarm income $1,000,000 or less** for the applicable 3-year period for the program year selected in Item 4?

A. ☐ **YES** **B.** ☐ **NO**

8. Was the average adjusted gross farm income for the applicable 3-year period selected in Item 4 at least 66.66 percent of the average adjusted gross income (that is, both farm and nonfarm income)?

A. ☐ **YES** **B.** ☐ **NO** *If "Yes" is checked, and if income includes the sale of farm equipment or production inputs and services to farmers, ranchers, foresters, and farm operations, see definition of Farm Income on Page 2.*

By signing this form:

- I acknowledge that I have read and reviewed all definitions and requirements on Page 2 of this form;
- I certify that all information contained within this certification is true and correct;
- I take responsibility to timely notify FSA in writing of any changes to the farming, ranching, or forestry operation, or a change in financial status that may affect this certification;
- I certify that my income certifications are consistent with the tax returns filed with the Internal Revenue Service (IRS) and with the definitions specified on Page 2 of this form;
- I agree that at least every three years beginning no later than for the 2011 program year, or the year this person or legal entity ceases operation if that occurs first, I will submit evidence such as tax records, business documents (for review only, not for retention), or a signed third-party verification deemed acceptable by CCC to verify the average adjusted gross income, average adjusted gross farm income, and average adjusted gross nonfarm income, and that I will take the necessary actions to provide such documents or certification;
- If requested, I agree to authorize CCC to obtain tax data from the IRS for AGI compliance verification purposes and I will take all necessary actions required by the terms and conditions of the IRS disclosure laws so that CCC can obtain such data.

9. Signature (By)	10. Title/Relationship *(Individual Signing in the representative capacity)*	11. Date *(MM-DD-YYYY)*

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

GENERAL INFORMATION ON AVERAGE ADJUSTED GROSS INCOME

Limitations related to income levels are a statutory payment eligibility provision for a number of commodity and conservation programs administered by CCC. This certification is needed to assist in program administration. Except as may be provided in applicable program regulations, any person or legal entity requesting certain program payments, either directly or indirectly, shall be subject to this provision. Any person or legal entity that is determined to have an average adjusted gross income that exceeds specified limits shall be ineligible for the program payment subject to that limit for the applicable crop, fiscal, or program year. Further, any covered benefit issued to a legal entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity whose relevant average adjusted gross income for the relevant period exceeds the average adjusted gross income limit. These determinations will be made pursuant to, and subject to, regulations issued on behalf of the Secretary. As of the time this form was created, the applicable limits were as follows:

For commodity, price support benefits, disaster assistance programs, and for the Milk Income Loss Compensation Program, if the person or legal entity has:

- average adjusted gross **nonfarm income** greater than $500,000, the person or legal entity is **not** eligible for payments and benefits from these programs.
- average adjusted gross **farm income** greater than $750,000, the person or legal entity is **not** eligible for direct payments under the Direct and Counter-cyclical Program.

For new contracts or participation in conservation programs after October 1, 2008, if the person or legal entity has:

- average adjusted gross **nonfarm income** greater than $1 million, the person or legal entity is **not** eligible, unless 66.66 percent or more of the average adjusted gross income is attributable to activities related to farming defined as "farm income" below.

Please note as indicated above that payments are further limited if persons and legal entities with an interest, either directly or indirectly, in a legal entity or partnership exceeds these same levels. Those persons and legal entities must also submit this form.

DEFINITIONS

Adjusted Gross Income is the individual's or legal entity's IRS-reported adjusted gross income. A three year average of that income will be computed for the three years of the relevant base period. Base periods vary by program year as indicated on the first page of this form.

Adjusted Gross Farm Income is for a year that part of the adjusted gross income that is farm income as defined below. The amount will be computed for each year separately and then averaged.

Adjusted Gross Nonfarm Income is the difference for the year between the filer's adjusted gross income and the filer's adjusted gross farm income. The difference shall be computed for each year of the base period, and then averaged.

Farm income means income related to the following: production of crops, livestock, fish and aquaculture for food; the feeding and rearing of livestock; products produced or derived from livestock; production of specialty crops and unfinished raw forestry products; processing, packing, storing and transporting farm, ranch and forestry commodities including renewable energy; production of farm-based renewable energy; the sale of land used for agriculture; sale of land or sale of easements and development rights to agricultural land, water and hunting rights, and environmental benefits; rental or lease of land or equipment used in farming, ranching, forestry operations; payments and benefits from risk management practices, crop insurance indemnities, catastrophic risk protection plans, conservation programs and government farm program payments. Proceeds from the sale of farm equipment and from production inputs to farmers and ranchers are generally considered nonfarm income. However, if for a year not less than 66.66 percent of the average adjusted gross income of the person or legal entity is derived from farming, ranching, or forestry operations, the person's or legal entity's farm income shall also include the sale of equipment to conduct farm, ranch, or forestry operations, and the production inputs and services to farmers, ranchers, foresters, and farm operations.

Legal Entity is a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, including joint ventures and general partnerships as determined by the Secretary.

Program year means the relevant program year as determined by CCC, for which a specific benefit is made available under a program authorized by legislation such as the Direct and Counter-cyclical Program, Milk Income Loss Contract Program, Conservation Reserve Program, Noninsured Crop Disaster Assistance Program, Supplemental Revenue Assistance Program. FSA may require additional information as necessary to make the relevant program payments.

Third-party verification means a signed statement from a certified public accountant (CPA) or an attorney that the person or legal entity meets the applicable AGI provisions for payment eligibility.

HOW TO DETERMINE ADJUSTED GROSS INCOME

Person. For persons that file the IRS Form 1040, specific lines on that form represent the adjusted gross income and the income from farming, ranching or forestry operations.

Trust or Estate. For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS.

Corporation. For a corporation, the adjusted gross income is the total of the final taxable income and any charitable contributions reported to IRS.

Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity. For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS.

Tax-exempt Organization. For a tax-exempt organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS.

ATTACHMENT 5

AGI Worksheet from 4-PL Handbook

197 Calculating Average AGI for 2009 and Subsequent Years

A Worksheet for Calculating Average AGI for 2009 and Subsequent Years

Use the following worksheet to calculate the average AGI for a person or legal entity.

Step	Action	Result
1	Enter the total AGI (both nonfarm and farm) for the 3 complete taxable years preceding the most immediately preceding complete taxable year of the year for which program benefits are requested. Year Amount _____ $_____ _____ _____ _____ _____	
2	Total the dollar amounts in step 1.	$
3	Calculate the **average AGI** by dividing the result of step 2 by the number of years in step 1.	$
4	Enter AGI for the same 3 years in step 1 that was derived from all activities related to farming, ranching, and forestry operations. Year Amount _____ $_____ _____ _____ _____ _____	
5	Total the dollar amounts in step 4.	$
6	Calculate the **average adjusted gross farm income** by dividing the result of step 5 by the number of years in step 4.	$
7	Calculate the **average adjusted gross nonfarm income** by subtracting the result of step 6 from the result of step 3.	$
8	Calculate the **percentage of the average adjusted gross farm income from the average AGI** by dividing the result of step 6 by the result of step 3, and multiply by 100.	%
	If **step 8 is 66.66% or greater**, and the person or legal entity has income for equipment sales or input services, go to step 13; otherwise, go to step 9.	
	Determination	**Eligible**
9	If the result of step 7 is $500,000 or less, the person or legal entity is **eligible** for all commodity, MILC, marketing loan gains, LDP payments, disaster assistance, and conservation program benefits. * * *	☐ Yes ☐ No
10	If the result of step 6 is $750,000 or less, the person or legal entity is **eligible for direct payments** under DCP.	☐ Yes ☐ No
11	If the result of step 7 is $1 million or less, the person or legal entity is **eligible for all conservation program payments**.	☐ Yes ☐ No
12	If the result of step 7 exceeds $1 million, but the result of step 8 is at least 66.66%, the person or legal entity is **eligible for all conservation program payments.**	☐ Yes ☐ No

197 Calculating Average AGI for 2009 and Subsequent Years (Continued)

A Worksheet for Calculating Average AGI for 2009 and Subsequent Years (Continued)

Step	Action	Result
13	Enter the total AGI derived from equipment sales and input services for the 3 complete taxable years preceding the most immediately preceding complete taxable year of the year for which program benefits are requested. Year Amount _____ $_____ _____ _____ _____ _____	
14	Total the dollar amounts in step 13.	$
15	Calculate the **average AGI** from equipment sales and input services by dividing the result of step 14 by the number of years in step 13.	$
16	Enter adjusted gross farm income for the same 3 years in step 4 that was derived from all activities related to farming, ranching, and forestry operations, plus the amounts entered in Step 13 for equipment sales and input services. Year Amount _____ $_____ _____ _____ _____ _____	
17	Total the dollar amounts in step 16.	$
18	Calculate the **average adjusted gross farm income** including equipment sales and input services by dividing the result of step 17 by the number of years in step 16.	$
19	Calculate the **average adjusted gross nonfarm income** by subtracting the result of step 18 from the result of step 3.	$
20	Calculate the **percentage of the average adjusted gross farm income from the average AGI** by dividing the result of step 18 by the result of step 3, and multiply by 100.	%
	If **step 20 is 66.66% or greater**, and the person or legal entity has income for equipment sales and input services, **go to step 21**.	
	Determination	**Eligible**
21	If the result of step 19 is $500,000 or less, the person or legal entity is **eligible** for all commodity, MILC, marketing loan gains, LDP payments, disaster assistance, and conservation program benefits.	☐ YES ☐ NO
22	If the result of step 18 is $750,000 or less, the person or legal entity is **eligible for direct payments** under DCP.	☐ YES ☐ NO
23	If the result of step 19 is $1 million or less, the person or legal entity is **eligible for all conservation program payments**.	☐ YES ☐ NO
24	If the result of step 19 exceeds $1 million, but the result of step 20 is at least 66.66 percent, the person or legal entity is **eligible for all conservation program payments**.	☐ YES ☐ NO

ATTACHMENT 6

This form is available electronically.

CCC-526C (12-17-08) U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation **PAYMENT ELIGIBILITY AVERAGE ADJUSTED GROSS INCOME CERTIFICATION FOR CERTAIN CONSERVATION RESERVE PROGRAM CONTRACTS APPROVED BEFORE OCTOBER 1, 2008**	1. County FSA Office or Service Center Address *(Include Zip Code)* 2. CRP Contract Number(s)

The authority to collect the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

NOTE: *The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a), as amended. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), and the regulations at 7 CFR Part 1400, as amended, authorize the collection of the information required by this certification. The information will be used to establish payment eligibility in accordance with the requirements of the law for applicants who are requesting program benefits subject to these provisions. Providing this information is voluntary; however, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information may be used by and provided to other agencies, IRS, Department of Justice, other State or Federal law enforcement agencies, and in response to orders of a court magistrate, or administrative tribunal. All information provided herein is subject to verification by the Commodity Credit Corporation. As provided in various statutes, failure to provide true and correct information may result in civil suit or criminal prosecution and the assessment of penalties or pursuit of other remedies.* ***PLEASE RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OR SERVICE CENTER OFFICE.***

3. Individual or Entity's Name and Address *(Include Zip Code)*	4. Program Year 5. Identification Number (*SSN or Tax ID No. last 4 digits*)

CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME: Each individual or entity that requests program benefits directly or indirectly must complete a certification of average adjusted gross income.

By signing this form, I acknowledge that:

- all requirements and definitions on Page 3 of this form were reviewed;
- the average adjusted gross income is the average of the three years immediately preceding the year specified in Item 4 above;
- this certification of average adjusted gross income is true and correct unless changes or revisions are submitted;
- it is my responsibility to timely notify Farm Service Agency (FSA) in writing of any changes in the farming, ranching or forestry operation, or financial status that may affect this certification;
- evidence such as tax records, certified public accountant's certification, or other documentation may be required to validate this certification;
- that the CRP contract(s) in Item 2 above was approved between May 13, 2002 and September 30, 2008, inclusive;
- that the provisions of the regulations at 7 CFR Part 1400 governing Average Adjusted Gross Income in effect on September 30, 2008 apply.

6. Type of Operation *(Check One)*

☐ Individual *(Complete Item 7)*
☐ Corporation *(Complete Item 9)*
☐ Tax-Exempt Organization *(Complete Item 11)*
☐ Trust or Estate *(Complete Item 8)*
☐ Limited Partnership, Limited Liability Company, Limited Liability Partnership or Similar Entity *(Complete Item 10)*

7. **Individual** For individuals that file the IRS Form 1040, specific lines on the form represent the adjusted gross income and the income from farming, ranching or forestry operations. The income from farming, ranching or forestry is derived from the Schedule F, IRS Form 4835 or comparable form.

A. The average of the adjusted gross income, as specified on the IRS Form 1040 (or similar item on IRS Forms for individuals) for the applicable 3 years, was $2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 7B.

B. The average of the amount reported to be from farming, ranching, or forestry operations on the IRS Form 1040 (or similar on Form 1040A or 1040EZ) for the applicable years, was at least 75 percent of the amount represented as adjusted gross income on the Form 1040 (or comparable amount on Form 1040A or 1040EZ). YES ☐ NO ☐

C. Signature (By)	D. Title/Relationship of the Individual Signing in Representative Capacity	E. Date *(MM-DD-YYYY)*

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

CCC-526C (12-17-08)

CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME (Continuation)

8. Trust or Estate For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS on the IRS Form 1041, or comparable forms. The income for farming, ranching and forestry is derived from the Schedule F, IRS Form 4835 or comparable form.

A. The average of the adjusted gross income as defined above, and reported to the IRS for the applicable 3 years, was $2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 8B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 8A above. YES ☐ NO ☐

C. Signature (By)	D. Title/Relationship of the Individual Signing in Representative Capacity	E. Date (MM-DD-YYYY)

9. Corporation For a corporation, the adjusted gross income is the total of the final taxable income and any charitable contributions reported to the IRS on Form 1120, or comparable forms. The income from farming, ranching and forestry is derived from the Schedule F, IRS Form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was $2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 9B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 9A above. YES ☐ NO ☐

C. Signature (By)	D. Title/Relationship of the Individual Signing in Representative Capacity	E. Date (MM-DD-YYYY)

10. Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS. The income from farming, ranching and forestry is derived from the Schedule F, IRS Form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was $2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 10B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 10A above. YES ☐ NO ☐

C. Signature (By)	D. Title/Relationship of the Individual Signing in Representative Capacity	E. Date (MM-DD-YYYY)

11. Tax-exempt Organization For a tax-exempt organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS. The income from farming, ranching and forestry would be derived from the Schedule F, or IRS Form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was $2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 11B.

B. The average of the amount represented to be from farming, ranching or forestry interests as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 11A above. YES ☐ NO ☐

C. Signature (By)	D. Title/Relationship of the Individual Signing in Representative Capacity	E. Date (MM-DD-YYYY)

AVERAGE ADJUSTED GROSS INCOME

The Farm Security and Rural Investment Act of 2002 included average adjusted gross income as a payment eligibility requirement. Any individual or entity requesting certain program payments will be subject to this provision. Any individual or entity that is determined to have an average adjusted gross income, as defined, that is less than 75 percent from farming, ranching or forestry operations and that exceeds $2.5 million will be ineligible for any covered benefit during the applicable year.

DEFINITIONS AND OTHER INFORMATION

Average Adjusted Gross Income means the average of the adjusted gross income or comparable measure of the individual or entity over the preceding 3 tax years. For instance, if 2003 program benefits are requested, the tax years for average adjusted gross income determination would be 2002, 2001 and 2000.

Entity means a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, as determined by the Secretary.

The manner in which the Adjusted Gross Income can be determined for an entity can be found in the regulations at 7 CFR Part 1400.

Commensurate Reduction means that any covered benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest the entity, general partnership, or joint venture of each individual who does not comply with the adjusted gross revenue requirement.

Certification of Compliance means that an individual or entity shall provide either a certification by a certified public accountant that the average adjusted gross income does not exceed the requirement; or provide information and documentation regarding the adjusted gross income through other procedures established by the Secretary.

Income from farming, ranching or forestry means income derived from producing crops, livestock, or unfinished raw forestry products.

Special Rules for Certain Individual and Entities are applicable to those entities that are not required to file a tax return, and individuals and entities that did not have taxable income in one or more tax years used to determine the 3-year average. Please consult with personnel at your local FSA office or service center for more information.

ATTACHMENT 7

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February 4, 2009

Salomon Ramirez
Director, Production, Emergencies and Compliance Division
Farm Service Agency
United States Department of Agriculture (USDA)
Stop 0517, Room 4752
1400 Independence Avenue, SW
Washington, DC 20250-0517

Re: Interim Rule; Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years; RIN 0560-AH85; 73 F.R. 79267 (December 29, 2008)

To Whom It May Concern:

The National Cotton Council of America (NCC) is the central organization of the U.S. cotton industry. We hereby submit comments to the interim rule appearing at 73 F.R. 79267 concerning amendments to the regulations governing farm program payment limitations and payment eligibility for the 2009 and subsequent crop, program, or fiscal years.

As an introductory matter, the NCC is concerned about the timing of the interim rule. The delay in issuing these interim regulations makes it very difficult for farmers and ranchers across the United States to adjust their operating plans in accordance with these new rules. The delay virtually assures that the interim rule will not be altered with respect to the 2009 crop, program or fiscal year, making the rule a *de facto* permanent rule without opportunity for comment for the upcoming crop year and making it difficult for the Department of Agriculture to correct mistakes that may appear in the interim rule. Further, the interim rule contains some changes to payment eligibility and program payment limitations that are not necessary to implement title 16 of the Food, Conservation, and Energy Act of 2008 (the FCEA) and are not required or suggested by the FCEA and therefore do not fit within the rulemaking exemptions contained in section 1601 of that Act. It is troubling that the Department would implement such significant, discretionary changes in the regulations governing these programs without providing proper notice and opportunity for comment.

The interim regulation generally reflects the intention of Congress as reflected in sections 1610 - 1612 of the FCEA. There are several areas of the rule, however, that are not reflective of Congressional intent or that will impose unnecessary hardships on farming operations across the United States. The NCC is also concerned that several provisions in the interim rule are unclear and could lead to conflicting and inconsistent local decisions regarding farm operating plans. Finally, the regulation appears to narrowly construe statutory changes regarding the treatment of spouses within farming operations, despite clear Congressional intent that discrimination against spouses be ended. Specific comments of the NCC are set out below.

§§1400.203 and 1400.204. Financing Arrangements

Sections 1400.203(b)(2) and 1400.204(c)(2) establish a reasonable rule governing the financing of joint operations and other entities. This subsection provides that if capital for a joint farming operation (or entity) is obtained as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations with an interest in the operation, the loan must bear the prevailing interest rate and have a repayment schedule considered reasonable and customary for the area. This rule ensures that financing arrangements between partners, stockholders or entities involved in joint farming operations will be arms length transactions and is an appropriate level of regulatory oversight regarding financing.

However, sections 1400.203(b)(1) and 1400.204(c)(1) as they pertain to financing a farming operation can be read to be directly contrary to .203(b)(2) and .204(c)(2). As such, these provisions are problematic and divorced from economic reality.

Subsection (b)(1) in section 1400.203 (with respect to joint operations) and (c)(1) in 1400.204 (with respect to limited partnerships, LLCs, corporations and similar entities) provide that capital contributed by the joint operation or entity must not be acquired as a loan made to, guaranteed, cosigned, or secured by --

> "(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including either joint operation's (or legal entity's) members;
>
> "(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or
>
> "(iii) Any person, legal entity, or other joint operation in whose farming operation such legal entity has an interest."

The provisions in (b)(1) and (c)(1) of these sections requiring fully separate financing of joint farming operations ignore economic realities facing all farming operations, large and small. They also ignore the current economic climate in the United States and the difficulty involved in obtaining operating loans and other lines of credit to finance farming operations. Given the current economic climate in the United States, loan guarantees will be standard for many farming operations in 2009 and subsequent crop years.

A reasonable interpretation of the interim rule is that, in general, capital should not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by any person, legal entity or joint operation having an interest in the farming operation (including members of the legal entity), but that if the capital is acquired using such guarantees co-signatures, or joint security, the loan must be reflective of an arms length transaction.

It is recommended that, to clarify this intent, the rule be amended in §§1400.203(b)(1)(iii) and 1400.204(c)(1)(iii) by striking "interest, and" and inserting "interest, or".

§1400.202. Spousal Attribution Provisions

Section 1400.202 of the interim rule provides as follows:

> (b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

The regulatory provision inappropriately limits Congressional intent as provided in §1001A(e)(6) of the Food Security Act of 1985, as amended (the FSA). The statute provides simply that if one spouse is determined "to be actively engaged" then the other spouse shall be determined to have met the requirements of subsection (b)(2)(A)(i)(II), namely, that the other spouse makes a significant contribution to the farming operation of personal labor or active personal management.

The key determination in the statue is whether one spouse has been determined to be actively engaged with respect to *any* farming operation, not "only to the same farming operation" as provided in the regulation. If one spouse is determined to be actively engaged, then the other spouse automatically meets the requirements of active personal labor or management. Specifically, if Spouse1 is determined to be actively engaged with respect to a farming operation, then Spouse2 is automatically deemed to have made a significant contribution of personal labor or active personal management with respect to any farming operation in which Spouse2 is involved.

This "spousal attribution" rule should also apply to the spouses if they are shareholders or owners in corporations, limited liability companies (LLCs) or similar entities, including when they are shareholders or owners in corporations, LLCs or similar entities that are partners in a farming partnership. The personal labor and active management contributed by one spouse should be attributed to the other. The regulations should be amended to make it clear that the spousal attribution rule applies equally to spouses that are stockholders in a corporation or members of LLCs. There is a very practical reason for this change. It is good business practice for a farming operation to be organized in a manner that will limit liability. Under the interim rule, in a farming partnership consisting of husband and wife, an "actively engaged" husband will enable the wife to meet the requirements of active personal labor or management. However, if that same partnership is organized with two single-member LLCs (Husband, LLC and Wife, LLC) for the purposes of limiting liability, the Husband's contribution of active personal labor or active personal management that qualifies Husband, LLC as "actively engaged" should enable the wife to use that contribution to qualify Wife, LLC as "actively engaged."

Second, while the regulation does address spousal attribution of labor and management (at least with respect to non-corporate or non-LLC entities and operations), it does not address the valuation of that contribution. Producers developing farm plans under the new rules need to be apprised of the value to be assigned to the spouse under the "spousal attribution" provision in order to determine if, in fact, the second spouse meets all applicable aspects of the commensurate test. This determination is particularly important in non-community property states. The statute mandates that the attributed spousal contribution be considered to be "significant," therefore, the value assigned to that contribution for purposes of the commensurate test of §1001A(b)(2)(A)(ii) of the FSA must also be "significant." Because it is impossible to accurately value this attributed contribution, the fact the contribution is deemed significant should be sufficient. In employing the commensurate test to a farming operation consisting exclusively of the husband and wife, the Department should consider only the contributions of land, capital and equipment. However, in employing the commensurate test to a farming operation in which there are members in addition to the husband and wife, the Department will be required to assign some value to the spouse's attributed contribution in order to apply the commensurate test among all of the partners. In such situations, the Department should consider the attributed contribution of the spouse to be of equal value to the actual contribution of the "actively engaged" spouse. It seems clear that

Congress intends for the spousal attribution contribution to be at least equal to the attributing spouse's contributions.

Changes to Rules on Actively Engaged

The interim regulation makes unwarranted changes in several of the main components of the statutory requirement that an individual or entity be actively engaged in farming. With respect to individuals (or members in a partnership or similar entity) the specific changes are highlighted in the following table (emphasis is supplied):

Statute	Regulation	Comment
A person…*shall* be considered to be actively engaged in farming with respect to a farming operation *if*--	Actively engaged in farming means…that the person or legal entity:	
(i) the person makes a significant contribution…to the farming operation of (I) capital, equipment, or land; and (II) personal labor or active personal management;	**Independently and separately** makes a significant contribution to a farming operation of: (i) Capital, equipment, or land, or a combination of capital, equipment, or land and (ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;	Regulation adds "**independently and separately**" Later, the regulation defines "independently and separately" for the purpose of capital, equipment, etc., by requiring a "separate and distinct interest in the land, crop, and livestock …."; by requiring the demonstration of "separate and total responsibility" for the interest in land, crop and livestock; and requiring that all funds and business accounts of the farming operation be separate from that of any other per-son or legal entity. The regulation also provides standards to be used to determine if labor or management is being provided "independently and separately."
(ii) the person's share of the profits or losses from the farming operation is commensurate with the contributions of the person to the farming operation; and	(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and	
(iii) the contributions of the person are at risk;	(3) Makes contributions to the farming operation that are at risk **for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation**.	The regulation adds, without foundation, a requirement that the contributions not only be "at risk" but also be at risk "**for a loss**" and then requiring that level of risk (possible loss?) to be commensurate with the person's claimed share of the proceeds. This new language is nowhere to be found in the statute.

The interim rule adds these requirements to the determination of "actively engaged" even though these requirements are not in the FCEA, were not addressed directly by any amendments to the FCEA or other farm legislation, and that may run contrary to the statute. As noted in the table above, non-statutory requirements are added, and then defined with a new list of requirements, including a "separate and distinct" (yet another adjective) interest in the land, crop, and livestock involved in the farming operation, the demonstration of "separate and total responsibility" for the interest in the land, crop, and livestock in the farming operation; and that "all" funds and business accounts of the farming operation are separate from that of any other person and legal

entity. This litany of new standards, as demonstrated, is not only without statutory support, it heaps confusion upon top of confusion. The interim rule introduces a new standard "independent" that is modified by at least three adjectives -- separate, distinct, and total responsibility. The overkill is significant, repetitious, and cannot help but create chaos among individuals responsible for implementation who must determine whether "independent" is different from "separate" and different from "distinct." Normal statutory construction would indicate that if the drafter of the regulation uses different words, the drafter had different meanings in mind.

Further, the interim rule's new standard to determine whether one's contribution is "at risk" goes far beyond statutory language. The statute requires only that one's contribution be "at risk." Section 1400.201(b)(3) and other sections[1] add that the contribution must be at risk "for a loss" and that the level of risk must be "commensurate with the person's or legal entity's claimed share of the farming operation."

Neither of these new standards have any statutory foundation. In fact, the issue of commensurate contributions is dealt with by the statute in a clause that is separate from the requirement that contributions be "at risk." The regulation, however, attempts to graft onto the "at risk" requirement a standard that is, according to the statute, only applicable to the individual or entity's claimed share of profits or losses. This new language is subject to even more speculation and subjective evaluation, all without the benefit of statutory support or statutory evidence of Congressional intent.

The regulatory language could mean that in the case of a father who has farmed for years and accumulated a significant net worth is in a 50/50 partnership with his son or daughter who has just begun farming with him, the risk of the son or daughter is not commensurate because he or she does not have substantial wealth available to lose. If this is the case, few sons and daughters could return to the farm and farm in a partnership with their parents. The requirement has always been that the contributions of the participants be "at risk" as surely they are. The addition of the language that the risk "be commensurate with the person's or legal entity's claimed share of the farming operation" should be deleted.

NCC also notes that under the Uniform Partnership Law enacted by all fifty states, every partner in a general partnership, irrespective of his or her partnership interest is 100% liable, jointly and severally, for all partnership debts. Thus a 5% partner in a general partnership and a 50% partner are equally jointly and severally liable for the entire debt. Each partner would have the right of contribution from the other partners whose percentage share they paid, but nonetheless, the risk is in no way related to the person's or legal entity's claimed share of the partnership. If a crop loan is $1,000,000, the 5% partner is at risk for $1,000,000 just like a 50% or a 95% partner would be. In the real world, the risk may never be commensurate with the person's or legal entity's claimed share of the farming operation.

We recommend that these new "actively engaged" standards be stricken (including the new modifications to the at risk provisions) and that subsection 1400.201(c) be stricken in its entirety as it is without statutory support, is confusing in the extreme, and will not be helpful to officials implementing the regulation or farmers attempting to comply with such arbitrary standards.

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[1] For example, §1400.7 also contains changes in the "at risk" language, as do §§1400.202, .203, and .204.

Requirement of Contribution of Active Personal Labor, or Active Personal Management, or a Combination That Are Regular, Identifiable and Documentable and Separate and Distinct

The interim rule, in §§1400.203 and .204 amends existing regulations regarding actively engaged determinations for joint operations, corporations and similar entities to require that all members of such operations must provide active personal labor or active personal management (or a combination) that are --

> "(A) Performed on a regular basis,
>
> "(B) Identifiable and documentable, and
>
> "(C) Separate and distinct from such contributions of any other member of the farming operation."

While the NCC understands the Department's concerns about passive investors being eligible for farm program benefits, the modifications to the labor or management requirements take the wrong approach, utilize an inappropriate regulatory methodology and adopt a standard that is overbroad, overreaching, vague and confusing.

With respect to partnerships and joint operations, the new "separate and distinct" requirements seem to run contrary to the notion of active partners working together in a farming operation. The NCC has concerns that normal joint participation by full partners in a farming operation may not provide sufficient evidence under the regulation of each partner performing fully separate, identifiable, regular and distinct labor or management for the operation. Further, the NCC believes that the Department's concern about passive members of farming operations does not apply to partnerships and joint ventures. This change should be revoked with respect to §1400.203.

With respect to corporations, the NCC again notes that the language in the interim rule requiring separate contributions of active personal labor or management by every stockholder (§1400.204(a)(2)) is not supported by the statutory language that provides as follows:

> "(ii) the stockholders or members *collectively* make a significant contribution of personal labor or active personal management to the operation;...." [emphasis supplied]

The statute clearly requires a showing of collective not individual contributions of labor or management. The statutory approach makes sense as a corporation acts as an entity -- not as a series of independent actions made by its stockholders. The interim regulation ignores the statute and creates its own standard -- a standard based on individual, not collective, contributions.

The regulation's requirement of fully separate and distinct contributions that must be regular, identifiable and documentable, if taken to the extreme as indicated in the supplementary information to the interim rule, would require a breakout of farming responsibility and management that is artificial and divorced from how farms actually operate. While implied by the supplementary information to the interim rule, it seems implausible that the Department would expect every stockholder of a farming corporation to have a separate and distinct job or responsibility that is shared with no other stockholder of the same corporation. There are countless important elements of management that are not performed on a "regular basis." Financing is arranged one time; land and equipment leases are negotiated and executed, usually,

one time; equipment needs are evaluated one time; etc. The regulations add to this uncertainty by downplaying the traditional role of stockholders and directors, namely, that of *collective* management and decision-making. The supplementary information essentially asserts that a significant contribution by the collective group cannot be reached unless each individual is contributing labor or management, a proposition that is clearly not supported by the statute. Again, the NCC notes that the statute focuses on the "collective" aspect of corporations and similar entities while the interim rule ignores this fundamental aspect of corporate law and corporate operations.

Additionally, the stockholder requirements in §1400.204(a)(2) are also extremely vague and will leave many farm operations uncertain for a long time as to whether their particular division of management and labor will be deemed by a specific county or state FSA Committee to meet the regulatory requirements. The listing of standards, as well as examples that downplay the importance of collective and joint decision-making in entities, will undoubtedly lead to different determinations by different local offices throughout 2009 and the next several years.

The language in the interim rule in §1400.204(a)(2) should be deleted or at the very least revised by striking clause (iii). Second, §1400.204(a)(3) should be revised by striking the word "contribution" and inserting the words "collective contribution" in order to conform this paragraph to the statute.

The NCC has the same concerns with the new "at risk for a loss" language contained in §§1400.202, .203, and .204, as indicated above in the discussion about §1400.201 and recommends that this new standard be stricken in these parts of the regulation as well.

Scheme or Device

Overall the regulatory language concerning schemes or devices (§1400.5) reflects the statute and is an improvement over existing regulations. However, some illustrations in the regulations regarding operational activity that demonstrates a scheme or device (§1400.5(b)(3)) should be restricted or deleted. For example, having fallow land, or land with no production should not imply a scheme or device. The current farm program does not even require production in order to receive certain benefits. Further, the NCC is uncertain as to the definition of "appreciable assets" as used in §1400.5(b)(3)(ii). This lack of clarity could lead to erroneous findings of "scheme or device" where one does not exist.

§§ 1400.1 and 1400.201. Applicability to Conservation Programs

In an expansion of the "actively engaged" component of the statute, the interim rule apparently adds the requirement that a person or entity be "actively engaged" in order to be eligible to receive conservation benefits, even though this requirement is apparently not included in the statute. The NCC does not support this expansion of the actively engaged requirement.

§1400.14. Substantive Change in Farming Operations

The interim rule's provisions on changes in farming operations create a bright-line test to determine whether a change in farming operations not involving a family member is bona fide and substantive. It requires an increase of *20 percent or more* of base acreage involved in a farming operation in order for such a change to be considered bona fide and substantive. Under this provision, an increase of 3000% in base acreage would only support the addition of one

person or legal entity to a farming operation, unless the State FSA office is convinced based on unspecified criteria that the increase supports additional persons or legal entities.

The statute itself creates no such bright-line test. The NCC believes that such a test can be helpful if established as a positive benchmark, i.e., that the addition of 20% or more will support the addition of another person or entity, but is opposed to §1400.104(b) which makes this level of an increase in base acreage a mandatory requirement.

Subpart F - §§ 1400.500, et seq. Adjusted Gross Income Limitation

Subpart F of the interim rule is generally reflective of the new statutory provisions. This is, however, a dramatically different income test and producers, lawyers and accountants have significant concerns about the required certifications and the level of documentation required during signup. There are no reliable precedents with respect to many of these issues. Additional issues regarding this subpart will likely become evident as farmers and accountants become more familiar with the new rules. At present, the NCC offers the following comments --

- While the NCC is generally supportive of the interim rule's reliance on IRS regulations and precedents, recent IRS rules limit annual losses that may be claimed in any specific tax year to $300,000 if one receives farm payments. This rule will have an impact that is difficult to predict. If a producer loses $600,000 or more in one year despite farm program payments, it is possible that the new IRS rules could work to disqualify the producer from program benefits for the subsequent year even though the farming operation actually had a significant loss and would be under the ceiling if full losses had been recognized. IRS rules restricting the claiming of losses in a year should not be applied for the purposes of adjusted gross income (AGI) tests.
- The NCC supports the provisions in the interim regulation providing that splitting income between spouses for the purposes of the AGI test will conform to IRS rules.
- The NCC believes the regulations support the continued inclusion in farm income of wages paid by a corporation or other entity that is a farming operation to its members or employees.
- The interim rule provides in §1400.501(c)(2) that the adjusted gross income of an individual filing a joint return will be as specified in such joint return unless a "certified statement is provided by a certified public accountant or attorney" that details the amount of income allocated to each spouse had they filed separate returns with the Internal Revenue Service. However, the interim rule does not provide any example of such a "certified statement." The NCC believes that the following certification should be acceptable:

  > "Based on information provided by the taxpayers, the allocation of income between spouses on this document is reasonable and reflects the ownership of the underlying assets."

- Finally, §1400.502(a) states that the Department can require program participants to provide annually an certification from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation, Internal Revenue Service data and other financial information, or authorization for the Secretary to receive the person or legal entity's tax data from the Internal Revenue Service. Section 1001D(d) of the FSA, however, not only states that such a certification must be provided "at least once every 3 years" but also gives the participant a choice between

providing certifications or providing sufficient financial information. The rule should be amended to allow the individual or entity to choose whether to provide a certification to the Department or to provide financial data. With respect to certifications, the significant changes in the adjusted gross income provisions covered by these regulations, make it difficult, if not impossible, for anyone to certify absolutely that they have interpreted every aspect of the new rules correctly and have, therefore, correctly determined that the AGI test has not been exceeded. The NCC urges the Department to provide that -- 1) either certifications or documents must only be provided once every three years; and 2) the certification by a certified public accountant or attorney or the person or legal entity can be based on a reasonable interpretation of the regulation and, in the case of the accountant or attorney, will be based on the information provided by the program participant.

Conclusion

Thank you for your consideration of our comments to this interim rule. The NCC will provide additional information if requested by the Department.

Sincerely,

Larry McClendon
Chairman

ATTACHMENT 8

April 6, 2009

Mr. Dan McGlynn, Acting Director
Production, Emergencies and Compliance Division
Farm Service Agency
U.S. Department of Agriculture
Stop 0517, Room 4754
1400 Independence Ave., SW.
Washington, DC 20250-0517

Re: Interim Rule; Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years; RIN 0560-AH85; 73 F.R. 79267 (December 29, 2008)

Dear Mr. McGlynn:

The Food Conservation and Energy Act of 2008 (the "FCEA") made several significant changes to the payment eligibility and payment limitations provisions applicable to commodity programs. Specifically, the FCEA eliminated the three-entity rule applicable to payment limits and instituted a system of direct attribution of payments; ended discriminatory treatment of spouses, making it easier for a spouse to participate in farm programs; adjusted the applicable payment limits; and reduced the applicable gross income ceiling and otherwise expanded means-testing for farm program eligibility.

Unfortunately, the interim regulations in many cases go beyond the FCEA amendments and in some cases are arguably contrary to existing law. Our most urgent concerns involve the following:

1) substantial new requirements for producers to be considered to be actively engaged in farming -- none of which were mandated by the statute;
2) unnecessary restrictions on the new spousal attribution rules;
3) unreasonable constraints on financing;
4) new actively engaged requirements for members of farming entities that are either confusing or are contrary to normal farming operations; and
5) expanding the "actively engaged" component of the statute to make it applicable to participation in certain conservation programs, even though this requirement is not included in the law.

In making the changes to actively engaged requirements, the interim regulations introduce vague, overlapping standards that cannot help but be implemented differently across the country. Among other things, the regulations introduce a new requirement that all members of a farming entity (partnership or corporation) must make a regular, identifiable, documentable, separate and distinct contribution of active personal labor or active personal management. Regarding corporations, the statute is clear that eligibility should be determined based upon the collective action of all shareholders and not based upon each shareholder's individual actions. With respect to partnerships, the "separate and distinct" requirements run contrary to normal farming operations where management is usually undertaken jointly by the partners.

The regulation's language concerning financing can be read to prohibit any guarantee, cosigning or backing of a loan by any person, legal entity, or joint operation that has an interest in the underlying farming operation. It is common in husband and wife operations for both spouses to sign loan documents, thus, guaranteeing the loan of the other. Likewise, members of partnerships typically sign and guarantee the partnership loans. Disallowing such loan guarantees and financing arrangements ignores the economic and legal realities of how these farming entities operate and could make it impossible for many farming operations to secure necessary financing for 2009.

The interim rule would frustrate Congressional intent by narrowly construing spousal qualification to apply only at the personal level rather than acknowledging that spouses are no less part of a family farming operation when taking on the role of a stockholder or a member of a limited liability corporation on the farm. The rules ignore the importance of being able to organize farming operations appropriately to address liability and other legitimate business concerns.

It is also troubling that the interim rule introduces a bright-line test for a substantive change in farming operations not involving family members. The new rule requires an increase of *20 percent or more* of base acreage involved in a farming operation in order for such a change to be considered bona fide and substantive. Under this provision, an increase of 3000% in base acreage would only support the addition of one person or legal entity to a farming operation, unless the State FSA office is convinced based on unspecified criteria that the increase supports additional persons or legal entities. The statute itself creates no such bright-line test.
Except for the provisions concerning spousal eligibility, these significant changes included in the interim rule were not even suggested by the amendments to payment eligibility rules contained in the FCEA. We hope that the Department of Agriculture will revise many of these new standards and return necessary predictability and practicality to the payment eligibility and payment limitation regulations.

Sincerely,

National Barley Growers Association
USA Dry Pea & Lentil Council
National Corn Growers Association
USA Rice Federation
US Rice Producers Association
Southern Peanut Farmers Federation
National Cotton Council
American Farm Bureau Federation
National Association of Wheat Growers
American Society of Farm Managers and Rural Appraisers

ATTACHMENT 9

Congress of the United States
Washington, DC 20515

March 13, 2009

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

Dear Mr. Secretary:

On December 29, 2008, the U.S. Department of Agriculture (USDA) published an interim final rule in the *Federal Register* (Volume 74, Number 249, Page 79287) to implement the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) payment limitation and eligibility provisions for the 2009 and succeeding crop years. The rule goes far beyond Congressional intent and makes "discretionary" changes to the "actively engaged rule".

The 2008 Farm Bill contains significant reform, including the elimination of the three-entity rule, direct attribution, and stricter adjusted gross farm and non-farm income tests. However, it is important to note that the statute in no way requires or directs USDA to make changes to the way individuals and entities are determined to be "actively-engaged-in-farming" except in the case of certain spouses.

The failings of this "discretionary" rule stem from the changes producers must make to their farming operations to comply with the rule. These changes cannot be made quickly as producers must make wholesale changes to the setup of their farming operations. Complicating this matter is the Administration's position that they will take comments well into 2009 and if comments drive a change to the rule, they will revise it for the 2010 crop year. This new rule forces producers to make irrevocable changes to their operations and then possibly forces them to make additional changes for the 2010 crop year.

We are concerned that these changes create legal uncertainty and confusion regarding what constitutes "actively-engaged". We respectfully request that such changes be withdrawn or at the very least delayed for the 2009 crop year. As you may know, the narrow crafting of the payment limitation and eligibility provisions of the 2008 Farm Bill reflects the intention of Congress to provide continuity with respect to existing rules and regulations established under the 2002 Farm Bill.

Congratulations on your appointment and confirmation. We look forward to working with you on this issue and the many others confronting America's farm and ranch families. We appreciate your favorable consideration of our request and comments.

Sincerely,

Mike McIntyre

Frank D. Lucas

Randy Neugebauer

John Boozman

Walt Minnick

Marsha Blackburn John Boozman

Aston Davis Ron Paul

Joann Emerson

Steve Scalise

Lynn Jenkins Kevin McCarthy

Cathy McMorris Rodgers

Bobby Bright

Sam Graves

Steve P. Austria

Mac Thornberry

Jerry Moran

Bob Goodlatte

Zach Kingston

Walter B. Jones

Thomas Petri

Jim Marshall

Rodney Alexander

Wally Herger

Sue Myrick

Dave Scott

Mary Fallin

Robert Adamsroth

Steve Kagen, M.D.

Allen Boyd

John Fleming

Denny Rehberg

Robert Hungate

T. Hold

Rick Simpson

Vic Snyder

Marion Berry

Chris D. Rodgers

Blaine Luetkemeyer

Sanford D. Bishop Jr.

Sam Graves

Ed Pastor

Hansen Clarke

Mike Ross

Larry Kissell

Pete Olson

Ray Blunt

David Pryor

Bob Packwood

Robert C. Byrd

Bob Smith

Don Nickles

Jo Bonner

Jesse Helms

ATTACHMENT 10

Congress of the United States
Washington, DC 20515

September 24, 2008

The Honorable Ed Schafer
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Mr. Secretary:

The Food, Conservation and Energy Act of 2008 significantly changed certain aspects of statutory provisions concerning payment limitations. Specifically, the statute provides for the direct attribution of payments and the elimination of the three entity rule. The law also establishes new measures to determine adjusted farm and nonfarm income to determine program eligibility. We are writing to ask that in drafting the regulations to implement theses changes, that USDA work to minimize disruptions to existing practices, and solicit as much input from affected producers as possible.

The implementation of these reforms, beginning with the 2009 crop year, will have a significant impact on a wide range of farming operations. Since the new rules will have far-reaching implications, we believe it is important for the Department to publish proposed regulations for public comment at the earliest possible date so farmers will have an opportunity to review and comment on the new rules.

These major changes in the 2008 Farm Bill were constructed to mesh with existing rules and regulations concerning whether an individual or entity is "actively engaged" in farming. In fact, both the Senate Report and the Conference Report emphasize that, except for the provision concerning spouses, the legislation reaffirms existing provisions concerning actively engaged determinations, adding that existing special classes of actively engaged participants should be preserved.

The legislation does not require or direct the Department to make any regulatory changes to the way individuals and entities are determined to be actively-engaged-in-farming except those necessary to implement new legislative provisions concerning spouses. We encourage you to tread lightly with any changes you propose, any further changes risk jeopardizing the statutory and regulatory balance contemplated by Congress in the new bill.

As Congress clearly stated, it is important for the Department to maintain consistency in the rules governing actively engaged determinations given the significant impact of eliminating the three-entity rule and application of two new adjusted income tests.

We will appreciate your favorable consideration of our views and ask that you keep us informed about the development of the new regulations.

Sincerely,

Bob Etheridge
Member of Congress

Jo Ann Emerson
Member of Congress

Robert W. Ehrlich

Robin Hayes

Ken Calvert

Sanford D. Bishop Jr.

Bill Cramer

Mike Ross

Marion Berry

Frank D. Lucas

Jack Kingston

Mac Thornberry

Ron Paul

Mike Rogers (AL)

Randy Neugebauer

Tim Holden

Devin Nunes

Henry Cuellar

Terry Everett

Jim Turner

Allen Boyd
Sue Myrick
Walter B. Jones
F. O. Bonner
Gabrielle Giffords
Chris Davis
Ray Sorrhood
Bennie G. Thompson
Jim Barrow
Lynn Abbott
Cheryl Melonce
C. W. Bonsby Jr
Jim Wh
Howard Coble
Donald J. Cazayoux
John Boozman
Ed Pastor
Robert B. Aderholt
Rubén Hinojosa
Rodney Alexander
Tim Johnson

Mike McCaty

Jerry Moran

Jim Snyder

Walley Herger

Doris O. Matsui

Jim Ryun

Hank Johnson

Chip Pickering

List of Co-signers of the House letter

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Rep. Jo Ann Emerson (MO)
Rep. Travis Childers (MS)
Rep. Robin Hayes (NC)
Rep. Mike Conaway (TX)
Rep. Sanford Bishop (GA)
Rep. Bud Cramer (AL)
Rep. Marion Berry (AR)
Rep. Mike Ross (AR)
Rep. Frank Lucas (OK)
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Rep. Brad Miller (NC)
Rep. Hank Johnson (GA)
Rep. Tim Mahoney (FL)
Rep. Wally Herger (CA)
Rep. Solomon Ortiz (TX)
Rep. Chip Pickering (MS)
Rep. Doris Matsui (CA)

The CHAIRMAN Thank you very much. I appreciate it. Mr. Younggren.

STATEMENT OF ERIK YOUNGGREN, SECRETARY-TREASURER, NATIONAL ASSOCIATION OF WHEAT GROWERS; MEMBER, BOARD OF DIRECTORS, MINNESOTA ASSOCIATION OF WHEAT GROWERS; WHEAT, SUGAR BEET, AND SOYBEAN PRODUCER, HALLOCK, MN

Mr. YOUNGGREN. Chairman Boswell, Congressman Moran, and Members of the Subcommittee, my name is Erik Younggren. I am a fourth-generation farmer from Hallock, Minnesota, where I produce wheat, sugar beets, and soybeans in operation with two of my cousins. I currently serve as Secretary-Treasurer of the National Association of Wheat Growers, and I am happy to be here today to share some thoughts on behalf of America's wheat producers. First, let me thank you for holding this hearing. We appreciate the work of this Subcommittee, particularly your efforts to maintain a strong safety net for farmers across the country in the 2008 Farm Bill. Considering the vast competing priorities and limited dollars with which Members were faced during the crafting of that legislation, we believe Congress created a law that preserved a strong farm safety net.

Since passage of that legislation, we have appreciated the willingness of USDA to hear and respond to our comments and concerns related to implementation. We have also been extremely grateful for the dedicated Farm Service Agency employees who are doing yeoman's work to sort through the implementing rules and regulations that have been made available. However, I would be remiss to be at this hearing today and not relay the extreme frustration currently felt in the countryside regarding farm bill implementation. It has been more than a year since the bill was initially passed, but there are still questions about how and when some programs will be put in place. At this point, many producers are being required to make management decisions that will impact the future of their farming operations without even knowing the rules.

If I could leave you with one message today, it would be this. Farmers need to know the rules. A safety net is not a safety net if farmers inadvertently disqualify themselves due to program complexities or lack of information. Though there are a number of specific issues in which we take great interest crop insurance, payment eligibility requirements and ACRE being a few for the purposes of this hearing, I will focus on some general comments concerning the new Supplemental Revenue Assistance program or SURE in which many of our members have great interest. I would also like to note that the American Soybean Association, National Barley Growers Association, National Cotton Council, and USA Rice Federation have provided input for this statement and have associated their organizations with my remarks. Enthusiasm for the SURE program is currently tempered by frustration related to its delayed implementation.

Though we appreciate USDA's commitment to expedite the rulemaking procedures for this program and other farm bill initiatives, we would nevertheless like to stress the need for the Administration to issue SURE rules as soon as possible. If at all possible, we

would like to see them in advance of the August 14 program sign-up deadline. There are a number of pending implementation details that will affect the utility of the SURE program to our members highlighting the need for regulation without further delay. For example, in order to make sure we work as effectively as possible with crop insurance, we believe USDA should use netted out-farmer paid crop insurance indemnities for purposes of calculating total farm revenue under SURE. The determination of whether to use net *versus* gross crop insurance indemnities will have a significant impact on the utility of this program to our producers, especially for those farmers purchasing higher crop insurance coverage levels.

Based on precedent established under previous crop disaster programs as well as practicality, we think this is the most appropriate route. We also urge USDA to further clarify NAP coverage requirements and give reasonable leeway on this issue with consideration to regional and operational diversity among growers. A great deal of confusion ensued this spring related to insurance purchase requirements for SURE eligibility, most of which traced back to unclear requirements regarding coverage on second crops planted after a late freeze or other disaster. We thank USDA for their recent efforts to address this issue, but believe this is an area where further USDA guidance can prevent future confusion.

Last, we urge USDA to work toward greater clarity on what constitutes a farm for purposes of the SURE program. We understand the program was designed to look at the whole farm but that is not as simple as it may sound. There have been many questions related to how this new definition will be interpreted and applied, especially as it relates to landlord and tenant relationships, as well as for those involved in multiple farming operations. Though these are only a few examples of issues needing clarity through regulation these items will largely determine the utility of this program to other members and will have an impact on producers, farm program, and risk management decisions. Again, we look forward to working with Congress and USDA to ensure that this program is implemented in a way that will maximize its utility and effectiveness as another piece of the overall farm safety net. Mr. Chairman and Members of the Subcommittee, I again, thank you very much for this opportunity to testify and stand ready to answer any questions you may have.

[The prepared statement of Mr. Younggren follows:]

PREPARED STATEMENT OF ERIK YOUNGGREN, SECRETARY-TREASURER, NATIONAL ASSOCIATION OF WHEAT GROWERS; MEMBER, BOARD OF DIRECTORS, MINNESOTA ASSOCIATION OF WHEAT GROWERS; WHEAT, SUGAR BEET, AND SOYBEAN PRODUCER, HALLOCK, MN

Chairman Boswell, Congressman Moran and Members of the Subcommittee, my name is Erik Younggren. I am a fourth-generation farmer from Hallock, Minn., where I produce wheat, sugar beets and soybeans in operation with two of my cousins. I am an active member of the Minnesota Association of Wheat Growers' Board of Directors and currently serve as Secretary-Treasurer of the National Association of Wheat Growers (NAWG), a federation of 20 state wheat grower associations.

First let me thank you for holding this hearing. We appreciate the work of this Subcommittee—particularly those efforts that went into crafting the Food, Conservation, and Energy Act of 2008 and your efforts to maintain a strong safety net for farmers across the country.

I appreciate this opportunity to offer NAWG's thoughts on behalf of wheat growers on the status of the implementation of this vital piece of legislation.

Program-Wide Implementation Issues

Considering the vast competing priorities and limited dollars which with Members were faced during the crafting of this legislation, we believe Congress passed a strong and balanced farm bill. We were particularly pleased that Congress maintained the direct payment—the single leg of the three-legged safety net that is predictable on producers' balance sheets, and the most World Trade Organization (WTO) compliant of the three traditional Title I programs. In addition, Congress' dedication to maintaining a strong Federal crop insurance program was paramount, particularly as the utility of new programs such as the Supplemental Revenue Assistance (SURE) program and the Average Crop Revenue Election (ACRE) program continues to be dependent on a healthy and reliable crop insurance component.

Since passage of the legislation, we have appreciated the willingness of USDA to hear and respond to our concerns regarding implementation. We also would like to express our sincere gratitude to the dedicated Farm Service Agency (FSA) employees who are doing yeoman's work to sort through these rules and regulations and effectively communicate to producers.

However, I would be remiss to not relay the extreme frustration currently felt in the countryside regarding implementation of the 2008 Farm Bill, particularly regarding newly created programs and significant rule changes. It has been more than a year since the bill was initially passed, and growers are frustrated with the lack of quality information on how (or when) these programs will be put in place and how they might function for individual operations.

The content of the rules has a great bearing on the potential effectiveness of these programs. At this point in the process, many farmers across the country are being required to make management decisions that will impact the future of their farming operations without knowing what is needed to comply with relevant rules.

If I could leave you with one message today, it would be that farmers need to know the rules. A safety net is not a safety net if farmers inadvertently disqualify themselves due to program complexities or lack of information.

Despite substantial and commendable efforts expended by local FSA employees, it is clear that they have not been given adequate training in these new, complex programs in order to relay that information effectively to growers. This situation is made even more challenging by the fact that, in some cases, there is no information to give because implementing regulations are not yet available or, in the case of payment eligibility, criteria continue to evolve.

In addition to the complexities of individual programs, producers and FSA employees alike are just beginning to recognize the complexity of how they interact. The amount of analysis that will be required to determine how each management decision will impact future program payments, disaster eligibility and profit margins is overwhelming. Very little has been done to date to aid producers in understanding or interpreting these interactions or impacts.

Many in the private and association sector are in the process of offering educational tools to producers to help them during the farm program sign-up process. These tools and opportunities are also available to FSA employees, but we see USDA as holding the primary responsibility for educating FSA staff about the implications this policy will have for growers and their operations.

We recognize that the needs of USDA's Farm Service Agency are great. The agency's computer systems are drastically inadequate to handle even basic crop reporting functions, let alone complex programs such as SURE and ACRE. And we recognize that there are limited resources to remedy these inadequacies.

We pledge our assistance to you in Congress and to those in the Administration to ensure that sufficient resources are available for IT upgrades, employee training and other needs imperative to implementing these programs.

Though there are a number of specific farm bill implementation issues in which we take great interest—crop insurance, payment eligibility requirements and ACRE being a few—for the purposes of this hearing, I would like to focus on one main topic of great interest to our members: implementation of the SURE program. The American Soybean Association, National Barley Growers Association, National Cotton Council and USA Rice Federation have provided input for this statement and have associated their organizations with the remarks that follow.

Supplemental Revenue Assistance (SURE) Program

Considering wheat-growing areas span from Washington State to Virginia, and from Minnesota to Texas, there is likely to be some form of disaster in wheat growing country every year, be it drought, flood or some other untimely visit from Mother Nature.

Wheat growers have long been thankful for the recognition of Congress that there needs to be some form of assistance related to these severe crop losses. Historically, assistance has come in the form of *ad hoc* disaster programs, often passed long after the event occurred and implemented even later. We were pleased to see the SURE program created to relieve some of the reliance on less timely and fiscally burdensome *ad hoc* disaster programs.

As you know, the SURE program was designed to supplement the revenue protection producers can purchase from private crop insurance companies. Though SURE may provide lower levels of benefits than previous *ad hoc* programs for some producers, growers have been generally supportive of the program's creation. However, that support is currently tempered by frustration related to its complexity and delayed implementation.

The most significant frustration related to the SURE program is the current lack of rules. We believe that a high percentage of wheat growers will try to meet those eligibility requirements over which they have control (such as ensuring that they meet the insurance purchase requirements), but the lack of rules makes it difficult for growers to make well-informed risk management decisions or estimate any potential 2008 payments.

We recognize the complexity of the SURE program and appreciate USDA's commitment to expedite the rulemaking procedures for this program along with other farm bill initiatives. We also wish to provide some specific feedback relating to the administration of SURE that will impact the quality and effectiveness of the program. We hope that these suggestions will have the support of Congress and be adopted by the Administration.

Timing

We strongly urge the Administration to issue SURE rules as soon as possible, and if possible, in advance of the Aug. 14 deadline by which growers are required to make farm program election decisions. Several pending questions related to details of the SURE program, including which insurance price election will be used in the SURE calculation, will play into producers' determinations of whether or not to sign up for the ACRE program.

In addition, knowing the rules prior to the Sept. 30 crop insurance deadline will be particularly important for winter wheat farmers as they may desire to change coverage levels in order to improve coverage under the SURE program. The 2008 year will be a great test year in wheat country considering the losses experienced in parts of Kansas, Oklahoma, Texas and the Northern Plains, but it would be beneficial to understand how these losses will be paid under the SURE program to help inform farmers of its utility prior to the Sept. 30 crop insurance deadline.

Calculation of Total Farm Revenue

According to statute, total farm revenue includes crop insurance indemnities, but the decision to use net *versus* gross is left to the discretion of the Secretary. This determination will have a significant impact on the utility of this program to our producers, especially for those farmers purchasing higher crop insurance coverage levels.

Previous crop disaster programs have utilized net crop insurance indemnities as a matter of practice—that is, they reduce the gross indemnity by the crop insurance premium paid in order to arrive at the net indemnity payment. This practice has encouraged growers to increase coverage levels and supplement coverage in a way that covers shallow revenue losses. Conversely, use of gross crop insurance indemnities will reduce the incentive—or in some cases even work as a disincentive—for farmers to purchase buy-up coverage.

Based on precedent established under previous crop disaster programs as well as the practical implications related to use of net *versus* gross crop insurance indemnities, we believe USDA should use netted out farmer-paid crop insurance indemnities for purposes of calculating total farm revenue under SURE.

Definition of "Farm"

The SURE program creates a new definition for "farm," which includes "the sum of all crop acreage in all counties that is planted or intended to be planted" by an "eligible producer." An "eligible producer" is defined as a person, a corporation or a partnership, whichever is applicable.

We understand the program was designed to look at the "whole farm," but that is not as simple as it may sound. There have been many questions related to how this new definition will be interpreted and applied, especially as it relates to landlord and tenant relationships as well as for those involved in multiple farming operations. USDA should take these scenarios into consideration and clarify what constitutes a "farm" for purposes of the SURE program.

NAP Coverage Requirements

Following the spring freeze in Oklahoma and disasters in parts of Texas and Kansas, a great deal of confusion ensued in wheat country related to insurance purchase requirements for SURE eligibility. Much of the confusion was related to unclear requirements regarding NAP or other insurance coverage on second crops planted after freeze or other disaster conditions. This issue was largely traced back to a difference between RMA and FSA definitions of a double crop, and USDA has been working to remedy this discrepancy.

We thank USDA for their recent efforts to address this specific issue. However, there are other instances in which growers are required to making decisions related to NAP coverage without ample information or understanding of the requirements, or they are subject to unrealistic timelines under which they must choose coverage. For example, NAP deadlines may emerge before some growers have determined what crops they will plant.

To prevent future instances of confusion, we urge USDA to further clarify NAP coverage requirements and consider giving reasonable leeway in decision making out of consideration to regional and operational diversity among growers.

Conclusion

Cumulatively, these issues speak loudly to the need for regulations to be published without further delay. Producers are being expected to make planting decisions absent clarity on the programs and should not be forced to deal with unnecessary uncertainty in addition to the uncertainties already presented by markets, prices and weather.

We look forward to continuing to work with Congress and USDA both prior to and following issuance of the SURE regulations to ensure that these clarifications are made and the program is implemented in a way that will maximize its utility and effectiveness as another piece of the farm safety net.

We greatly appreciate the role you have played in both creating this bill and ensuring that the Administration implements it as you, the authors, intended. We pledge our support to both this Subcommittee as well as the Administration to ensure that the utility of all 2008 Farm Bill programs is fully realized.

Mr. Chairman and Members of the Subcommittee, I thank you for this opportunity to testify.

The CHAIRMAN Thank you very much. Mr. Johnson, please.

STATEMENT OF ROGER JOHNSON, PRESIDENT, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Mr. JOHNSON. Thank you, Mr. Chairman, and Members of the Committee for holding this hearing relative to the 2008 Farm Bill implementation process. As rural America is dealing with one of the most severe economic crises in history, especially relative to the livestock sectors, the goals of the 2008 Farm Bill will certainly be tested. USDA must implement the provisions as intended by Congress. For programs awaiting regulatory action, we urge the Department to be particularly cognizant of Congressional intent and be timely in getting programs up and running. I would like to discuss three elements, in particular the first one being permanent disaster or the SURE program. This was obviously a very top priority for the National Farmers Union. Our members believe the lack of a standing disaster program was the single biggest hole in the safety net. This new comprehensive disaster program is designed differently than the earlier ad hoc disaster programs which had lots of issues associated with them. We would like to make sure that the SURE program does not have those same issues associated with them.

This program was designed on principles to ensure incentives for enhanced crop insurance participation and provide assistance for whole farm revenue losses. Proper implementation will keep crop insurance as the primary risk management tool for producers ap-

propriately so. It will target disaster assistance to those with proven losses on a farm's entire crop production. Other components of this disaster program include the Livestock Indemnity Program, the Livestock Forage Program, the Livestock Emergency Assistance Program for a number of different entities.

To date, no regulations have been issued for any of these programs. We understand if the need for delay with respect to the SURE program because it is new, it is complex, it, in fact, it has a December requirement for implementation, but beyond that it doesn't really become effective until after the crop year and you sort of roll all the receipts together. However, for these livestock-related indemnity programs, in particular, there is an urgency to get these regulations out very soon. We visited with the Secretary a number of times. He understands that urgency and we are hopeful that those regs will come out yet, maybe this month. With respect to payment limitations, this was another issue that we spent a lot of time and gave a lot of attention to. There was, as a previous panelist has said, indicated significant reform. We supported the idea of the three-entity rule elimination and the direct attribution. This was significant payment limitation reform, and we need to be very careful as to how that is implemented.

As you have heard from other panelists, there is significant anxiety in the countryside about the insertion of IRS into some of these determinations. We think it is appropriate for the partnership between USDA and the IRS to verify eligibility and those sorts of things, but we hope that the least intrusive manner possible for these verification processes is the one that is ultimately chosen. Many of you are aware that, in recent months, there is a serious disaster occurring across the country, an economic disaster related specifically to the dairy industry, more generally to much of the livestock industry. The economic collapse of the dairy industry is spreading. It is impacting many in its wake. Demand is shrinking. Market prices are collapsing. Input costs are going up and reduced credit is available. There is a unique set of challenges that is being faced right now by the dairy industry and, in fact, many others in the livestock sector.

Our organization was one of the few to call for the elimination of the direct payments to bolster other facets of the farm safety net. This might be one example where those revenues or those dollars might more appropriately have been used regardless. The decision was made on the farm bill. I think it is incumbent now upon Congress and the Administration to relook at just exactly what is happening in the livestock sector and to start thinking about whether there are not additional policy tools that need to be put in place in order to protect that industry. While there are a number of other programs that are not under this Subcommittee's jurisdiction, I would be remiss if I didn't at least mention the conservation programs, country of origin labeling being one that we followed very closely.

I thank most of you on this Committee obviously for the good work that you have done on that and look forward to full implementation of that price reporting, PSA enforcement and contract reforms or other big issues, and of course interstate shipment of state-inspected meat was another area where we focused a lot of

attention and wish to thank the Committee and Members of Congress for giving new latitude to states with respect to this issue. I would be pleased to respond to any questions, and thanks again for the hearing.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF ROGER JOHNSON, PRESIDENT, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Good morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify on behalf of the farm, ranch and rural members of National Farmers Union (NFU). My name is Roger Johnson and I am the President of NFU—a nationwide organization representing more than 250,000 farm, ranch and rural residents.

As rural America is dealing with one of the most severe economic crises in history, the goals of the 2008 Farm Bill will be tested. In order for programs contained within the 2008 Farm Bill to be successful, the U.S. Department of Agriculture (USDA) must implement the provisions as intended by Congress. NFU urged Secretary Vilsack and his new team to take inventory of the status of all regulations, both issued and pending, to ensure the intent of Congress was met. For programs awaiting regulatory action, we urge the Department to be cognizant of Congressional intent and timely in getting programs up and running.

The Supplemental Agricultural Disaster Assistance program was a top priority for NFU. Our members believe the lack of a standing disaster program was the single biggest hole in the safety net. This new comprehensive disaster program is designed differently than *ad hoc* disaster packages and includes a variety of new programs and eligibility requirements. The Supplemental Revenue Assistance (SURE) program was designed on principles to ensure incentives for enhanced crop insurance participation and provide assistance for whole-farm revenue losses. Proper implementation will keep crop insurance as the primary risk management tool for producers and target supplementary disaster assistance to those with proven losses on a farm's entire crop production. Other components of the comprehensive disaster program include the Livestock Indemnity Program (LIP), Livestock Forage Program (LFP), Emergency Assistance for Livestock, Honeybees and Catfish Program and Tree Assistance Program. To date, no regulations have been issued for these new programs.

The 2008 Farm Bill introduced significant reform to both farm program payment limitations and eligibility rules. The legislation represented a major departure from previous policy by replacing the three-entity rule with the direct attribution and placing hard caps on adjusted gross income both on and off the farm. These changes are significant reforms, but careful attention must be given to the implementation and interpretation of the reforms.

We commend USDA for partnering with the Internal Revenue Service (IRS) to verify farm program payment adjusted gross income eligibility. However, significant anxiety is being expressed over the use of IRS information. Anxiety could be eased with a proactive and aggressive information campaign to ensure producers fully understand the partnership with IRS and means to protect individual producer information. USDA must listen to the concerns of producers and determine the least intrusive manner of using IRS information for farm program payment eligibility compliance efforts.

As you may know, the economic collapse of the dairy industry is spreading and impacting many in its wake. With demand shrinking, market prices collapsing, input costs increasing and reduced credit availability, dairy farmers are facing a unique set of challenges on multiple fronts. During farm bill negotiations, NFU was the only organization to call for the elimination of direct payments to bolster the other facets of the farm safety net. The current dairy crisis is an example of the inadequate price safety net contained in the farm bill. Congress and USDA need to take immediate actions to mitigate the extensive and irreparable damage being experienced by the dairy industry.

While not under the jurisdiction of this Subcommittee, a variety of additional farm bill programs are of significant importance to our membership.

Conservation programs—Implementation is vital to the planning process of producers across the country. Timely deployment of all conservation regulations is paramount.

Country of Origin Labeling—Implementation of COOL was a high priority for NFU and we were pleased a compromise agreement could be reached. As the pro-

gram is implemented, we will closely monitor compliance rates to ensure the integrity of the program is achieved.

Price Reporting, PSA Enforcement and Contract Reforms—Market transparency and competition are pivotal to the ability of independent livestock producers to receive a fair price for their livestock. Timely implementation of the livestock reporting requirements and new PSA enforcement requirements will ensure independent producers no longer fight anti-competitive practices with their hands tied behind their backs. The variety of contract reforms included in the bill is important to protecting vulnerable contract producers.

Interstate Shipment of Meat—The new compromise voluntary program is a core competition policy for our nation's livestock producers. Appropriate implementation that maintains the integrity of the compromise is important.

The 2008 Farm Bill included many important provisions and programs, reflecting a 2 year deliberation that included many compromises. More than 73 percent of the bill is for nutrition programs to fight hunger. The bill goes beyond the programs I mentioned above by investing in the next generation of renewable fuels, setting our nation on a path to energy independence. Was this a perfect piece of legislation? No. Unfortunately no piece of legislation as broad as the farm bill ever is. However, overall it is a good law that will benefit family farmers, ranchers and consumers. NFU looks forward to working with this Subcommittee and USDA to ensure all programs are implemented in a timely and efficient manner while maintaining the intent of Congress. Thank you for the opportunity to testify, I would be happy to answer any questions Committee Members may have.

The CHAIRMAN Well, thank you very much, all of you. I want to share something with you and then I want to turn the chair over to Mr. Ellsworth momentarily. The Transportation Committee is marking up, and I figure that I need to be over there to represent you on farm to market and a few other things. So I am going to apologize. I have to leave, but I had nothing to do with the timing. Those things happen around here. But Mr. Ellsworth is very capable of finishing up the morning, and I think you are on the Committee as well, Mr. Moran, so that is the situation that we are confronted with. And we actually will let Mr. Conaway be the Ranking Member at that time in spite of what we said when we started out. So with that little bit of information, I would like to direct at least one question to Mr. Stallman.

I appreciate your comments about letting family members be part of the operation. That is something I have been very concerned about, and we will continue that dialogue, as I am sure you will, as we talk among ourselves and with the Secretary and so on. But when have you been told to expect the rules and regulations to come out? Maybe you know something I don't know.

Mr. STALLMAN. Well, Mr. Chairman, we don't have any definitive dates. When we ask, it is in process. That is basically the answer we get.

The CHAIRMAN Okay. So you don't have an idea or expectation or "guesstimate" or something like that?

Mr. STALLMAN. Not that I would be willing to put on the table.

The CHAIRMAN Okay. Well, I don't blame you. I feel the same way so we will continue with that. I want to ask Mr. Ellsworth then to step up and take the chair, and I will go try to represent us on the very important documents being marked up in a few minutes. And, again, I thank you. I appreciate it. And we will continue to have an open door to every one of you as to the things you get concerned about. Every one of you had some very salient points, and we are concerned about it and let us continue to work together on those issues. Mr. Ellsworth, please. I think we will just go ahead and recognize Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you very much, and I will join you on the Transportation Committee momentarily. Mr. Stallman you are actively engaged in the issues that surround this. Can those issues be resolved by rule and regulation or is there a necessity for Congress to act?

Mr. STALLMAN. We think they could be resolved by rule and regulation. Barring that, then obviously it would take Congressional action.

Mr. MORAN. But the basic challenges that we face from the way it is being defined are rule and regulation issues, not law issues?

Mr. STALLMAN. That is our belief, yes.

Mr. MORAN. Okay. And ACRE enrollment, Mr. Litterer, we saw recently a report about the small number of farmers who enrolled. Is that troublesome to you, expected, is this a matter—you indicated that you were disappointed by the lack of education out in the field. Do you see if this program will grow?

Mr. STALLMAN. Well, it will grow, but I think we need to remind the Subcommittee that the ACRE enrollment didn't begin until April 27, right in the middle of planting time, so a lot of farmers have not had the opportunity to get in. For example, I will just use my personal experience. I went in Monday to our county office and certified my acres, which in Iowa are done by June 30, and then enrolled in the ACRE program. So you got two segments of producers out there. You have a third that haven't enrolled in either program, and you have ⅔ that have already enrolled like I had previously, earlier in the year, in the direct countercyclical program and then I elected to change over to the ACRE program. One of the issues that I would like to raise here though that could be a problem here: producers that are already enrolled in the direct countercyclical program when they elect to re-enroll or enroll in the ACRE program on their own land it is not a problem. They can sign the papers, and my contract was signed and finished that day.

The computer system worked great and everything was fine. For those rented acres, though, you have to take those forms out and have them signed by the landowners. And according to my office once that form is printed for ACRE that automatically takes them out of the direct countercyclical program option. And there is some fear that it will create some paperwork if the landowner would change his mind, doesn't want to enroll in the ACRE program, stay in the direct, and if they don't re-enroll by August 14 they could be totally out of the program. So that is a concern that needs to be passed on here that maybe could be resolved.

Mr. MORAN. Thank you very much. Mr. Younggren, the NAP coverage, I want to spend just a minute exploring that a little bit further. This has been an issue particularly in—it has been a Kansas issue and it has been an issue with sorghum growers as well. Just a moment to expand upon your concerns.

Mr. YOUNGGREN. Representative Moran, the issue with NAP coverage is that there is lots of confusion. The growers don't know what they are allowed to do. There would be an issue if you are a double crop county or not a double crop county, and it is just terribly confusing on the grower's side of what they are allowed to do and when or where the regulation is going to fall that they will still be in compliance and qualify for SURE in the other programs.

Mr. MORAN. A matter of uncertainty?

Mr. YOUNGGREN. Right.

Mr. MORAN. This is digressing a bit from the topic of the morning but the topic of the week, and certainly the topic of the last couple of weeks, has been cap and trade. Rumors of an agreement between Mr. Peterson and Mr. Waxman, I would be interested in knowing from each of you if based upon what you now know whether you believe that the interests of agriculture are enhanced by this legislation or are there more positives than negatives in regard to the bill, as best we know what it may be, as we apparently are going to vote on it the day after tomorrow. Do the positives outweigh the negatives or the negatives outweigh the positives for what you know? Mr. Stallman.

Mr. STALLMAN. First off, let me say Chairman Peterson and the Agriculture Committee in general did great service to agriculture in trying to make a terrible bill better and to actually have a role for agriculture beyond just the opportunity to pay higher energy prices. Based on what we know as of this morning, and we have not seen language, and we understand there may be some unresolved issues yet, some smaller ones, we would be supportive of that amendment certainly on the floor and think that it would improve the Waxman-Markey bill. Having said that, we still have very great concerns that are more general in nature. The first is the overall cost, energy cost, that that bill, we think, will represent to the American economy, and, more importantly, to agricultural producers. We are a very high energy input cost industry, and even with the provisions in the amendment, we do not think that those negatives would be outweighed by whatever benefits could be provided through offsets.

We also have a great deal of concern about plugging the hole, as we say, in energy because the very rosy scenarios that were provided, the analysis of the Waxman-Markey bill by EPA made some grand assumptions about how much nuclear, solar, and wind energy would come online and how fast that would happen. And yet we have no policy or legislation that will actually make that happen. Under the current environment, we don't believe it will. Therefore, you will have a gap in energy and huge spikes in energy costs. The third issue we have is what we call the China Trigger, the fact that in these negotiations in Copenhagen that developing countries will try to get by with doing as little as possible. Therefore, we are taking on the economic burden as a country while those other countries will continue to do business pretty much as usual, and that creates a great competitiveness issue of not only for agriculture but for the rest of our economy.

Mr. MORAN. Thank you, Mr. Stallman. I thought you were going to take the easy answer and encourage me to vote for Mr. Peterson's amendment and stop in your answer, so I appreciate your continuation. Mr. Litterer.

Mr. LITTERER. Well, again, we haven't seen the specifics, but it does appear that Chairman Peterson made some significant progress in improving the possibilities for the climate change bill. We are going to take a look at those. Those are key. Our members had some principles that they had to have met, and we will have to see whether those are in the details. We will evaluate that

maybe even yet today. I would also say that the indirect land use issue, which is part of the RFS, was important to us as well, and it appears that maybe it could be resolved as well. So, the jury is still out with us but we are very pleased with the progress that was made and we will have to see whether we can support it.

Mr. MORAN. We would welcome your answer, ultimately, your recommendation as to whether this is good or bad.

Mr. LITTERER. We will.

Mr. MORAN. Mr. Hardwick, any comments?

Mr. HARDWICK. Yes, sir. The counsel is doing their analysis of this very complicated issue as well, and the extent by which it impacts producers is critical to us. Truly it impacts our cost of production and also the offset by permits and the whole cap and trade concept. Would there be enough offsets to even take care of the permits that we might have to have? So, we are conducting that analysis and as we have more information we certainly will be ready to respond.

Mr. MORAN. Thank you, sir.

Mr. YOUNGGREN. On behalf of the National Association of Wheat Growers, we appreciate the work of Chairman Peterson on behalf of American agriculture. At this point, we can't really make a recommendation. We will have to see the devil in the details and provide feedback later when we see the legislation.

Mr. MORAN. Mr. Johnson, you were most positive of our witnesses last week about cap and trade. I assume this is a significant improvement. Any other thoughts?

Mr. JOHNSON. Certainly. Just like everyone else on the panel, we very much appreciate the good work that the House Agriculture Committee did in bringing these changes to the bill. Chairman Peterson certainly deserves lots of accolades for standing tough on this. And from what we have seen, we have gotten some very big improvements to this bill, some of the things that we thought were absolutely necessary. USDA being in charge of offsets was a really, really bid deal for all of us in agriculture. It seems like that is the case. Of course, we are like everyone else. We haven't seen all the language, so we are very encouraged by that. The indirect land use issue, of course, has been a concern for all of our members for some time. And, of course, the cost estimates have been all over the board. The tenor of your general question, the most recent ones I saw were the CBO numbers which were significantly lower than a lot of the other numbers that have been floating around.

I suspect that we, at the end of the day, were certainly—I am sure we are going to be supportive of the amendments. I suspect that we will be supportive of the bill, but again we all need to couch our answers in terms of we want to see the language, but significant progress was made and the credit goes to Chairman Peterson and all of you who are Members of the Agriculture Committee.

Mr. MORAN. Thank you for your answers. I am fearful that the point you make about seeing the details is the same questions we are going to be asking on Friday if that is when the vote is, and the lack of analysis, the numbers, who has the right numbers. The time table for when this legislation is apparently being considered creates significant problems, and I worry that I as a Member of

Congress on Friday will be asking the questions that you are asking today. Thank you, Mr. Chairman.

Mr. ELLSWORTH [presiding.] Thank you, Mr. Moran. We have been informed, gentlemen, that a vote has been called. We have polled the Members up here, and I know that Mr. Conaway has some questions. Everyone else has to go to other meetings so we will conclude at the end with Mr. Conaway. If there is time, I may have a question, but I would then yield to Mr. Conaway for his questions.

Mr. CONAWAY. Thank you, Mr. Chairman. I appreciate that. Involving the IRS with the audits, Bob, you mentioned audits, it seems to me that the IRS has the confidential data already on each farmer. They could run a computer program that would make the computations and then be able to certify those properly without the local office having to get copies of tax returns and doing all that kind of stuff. Mr. Johnson, I think you gave us a head nod that you are okay with a proper phase. I think most producers I talked to are concerned about bringing 3 years worth of tax returns which include data beyond the farming operations into an FSA office and having that exposed. Any comments about having the IRS do the certification that producers either are or aren't eligible for direct payments?

Mr. STALLMAN. Well, first, you are absolutely correct that producers are reluctant to provide documents into the local FSA office, for all the confidentiality reasons, for providing information that exceeds what is absolutely necessary to determine their eligibility. We believe that IRS can be a screener in that process. The one problem that exists is the definitions in terms of what constitutes farm income or not between the eligibility provisions and the way IRS categorizes data. It may be problematic. That might actually—if a producer is identified as having the potential to exceed those limits; it might actually require a professional to sit down in terms of an audit and review those differences in income, which may or may not allow the producer to be eligible even though IRS may flag that particular producer.

Mr. CONAWAY. But those limited number of folks could be handled on a more discreet basis——

Mr. STALLMAN. Absolutely.

Mr. CONAWAY.—with professionals involved.

Mr. STALLMAN. And we would suggest that should happen outside the county office.

Mr. JOHNSON. If I could add, just because you mentioned where Farmers Union was on this, I think we would associate our comments very much with what Mr. Stallman has just indicated. We don't think there is a need for any of the IRS records to go into the FSA office. We don't think that was the intent. And I understand the Secretary, from visiting with him and members of his staff, that they are trying to work out a process whereby there would just be sort of a yes-no kind of a cut off that all the information would stay with the IRS and there would just be a determination.

Mr. CONAWAY. Certainly the producers got to make a certification on their own that they qualify. That is clear. No problem with that. Jay, you brought in the forms that the producers are

being asked to fill out. One of them goes through what is referred to as imbedded entities, which is an odd phrase but maybe that is known very well. It goes through like four or five levels of imbedded entities. What is the business reason for having embedded entities separate and apart from—why would people raise their businesses that—or what are they trying to get at?

Mr. HARDWICK. The imbedded entities goes back to, of course, the 2002 Farm Bill structure coming forth to explore the depth of payments and who is attributed to them. And so you will have individuals or entities within that that need to be mined down to find out through the attribution process what those people are gaining and at what point they stop if that is what you are referring to. But it uncovers all people who will be participating in the farm operation.

Mr. CONAWAY. Now is this something that you guys have been doing all along or is this new?

Mr. HARDWICK. Yes.

Mr. CONAWAY. That was not a yes or no—I mean is this something you have been doing all along?

Mr. HARDWICK. Me personally?

Mr. CONAWAY. No, the system.

Mr. HARDWICK. This process to sign up?

Mr. CONAWAY. Well, the process of drilling down through five levels of imbedded entities. You have been doing that since 2002?

Mr. HARDWICK. Yes.

Mr. CONAWAY. Okay. All right. And the reason for why you would arrange your businesses that way? Is there a business reason separate and apart from payment limits?

Mr. HARDWICK. Well, I am not sure if I understand your question completely, but it is the form that requests us to——

Mr. CONAWAY. No, no, no. Step away from the form altogether. What is the business model that makes that efficient for you guys to raise your——

Mr. HARDWICK. Well, the business model would be, for example, my operation is a partnership with individuals and entities where they have corporations that have people within those corporations. So, they may be linked to other operations on a farm or family somewhere so they have to be identified.

Mr. CONAWAY. Right, and then all of those folks would have to be directly involved in farming?

Mr. HARDWICK. Yes. So all people revealed and to what extent that they reach into other farming operations across families, for example.

Mr. CONAWAY. I appreciate your comments about the IRS because I do think there is a way to get at that which we all want, and that is we only have qualified people participating in the program but not exposing producers personal information beyond a point that it needs to. So, we will work with the Chairman on trying to help the system work that way. So with that, I yield back.

Mr. ELLSWORTH. Thank you, Mr. Conaway. Mr. Stallman, you spent enough time in this room, we may have to either charge you rent or put a bed roll under one of these chairs for you to sleep here, it has been so many times. I just have one final question on behalf of a constituent who called in just in the last couple days

with the concern that being from Indiana with our wet springs we have had in the last couple of years. They find themselves not getting the crops in by the time the sign-up for some of these programs is happening. I want to get your opinion on if the USDA had the flexibility to work around this, or if it is something we need to work on legislatively. I want to just get a quick opinion from you if that seems to be a problem from you and your constituents and something we need to be doing in the Agriculture Committee. Nobody wants that. I didn't ask it——

Mr. STALLMAN. Just in a general sense, I mean this issue of a planting date and what happens when you have weather problems and how much flexibility there is, I don't know if I can give a definitive answer. I believe there would be flexibility in the rules or in development of rules to allow for that, but there has always been a question. I guess it is kind of where do you draw the line, and that has been an ongoing problem. Obviously, it is in Indiana and other states this year, but it has been a problem in other parts of the country in other years.

Mr. JOHNSON. In North Dakota, we have dealt with these missed planting deadlines, it seems like way too often because the growing season is shorter. Sometimes you get a wet spring like this and the calendar just runs out. In most cases there are established procedures/penalties that apply if you miss planting deadlines, *i.e.,* your guarantees go down with respect to crop insurance, those sorts of things. For every day late you lose a certain amount of protection. So, that is most appropriately handled by rule. I would think that you wouldn't want to get into sort of describing that in law. You need to have some flexibility to deal with it.

The other thing that I would suggest is that, and it gets back to the SURE program that many of us talked about earlier in our testimony, even though there is a requirement for there to be year-end numbers before you ultimately determine how much an individual is eligible to receive under that program, we don't see any provision in the law and, therefore, no prohibition against USDA doing some sort of a partial advance in payments in cases where you have a significant disaster. It is apparent there is going to be a loss. There is no reason why you couldn't just do an early calculation like we have done on many other programs in the past and just pay out a percentage of that loss, and then settle up at the end of the year.

Mr. ELLSWORTH. Thank you all. Again, I thank you all for your testimony. I apologize for the brevity of this hearing, again, one of those uncontrollable called votes. I would encourage you and all of your constituents to stay in touch with our Committee as we can relate those back to the full House. With that, under the rules of the Committee the record of today's hearing will remain open for 10 calendar days to receive additional material and supplementary written responses from the witnesses to any question posed by a Member. This hearing of the Subcommittee on General Farm Commodities and Risk Management is adjourned.

[Whereupon, at 11:00 a.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED STATEMENT OF AMERICAN SOYBEAN ASSOCIATION

The American Soybean Association (ASA) is pleased to submit this statement for the record to the House Agriculture Subcommittee on General Farm Commodities and Risk Management public hearing to review of implementation of the Food, Conservation, and Energy Act of 2008. ASA represents 22,000 producer members on policy issues of national importance to all U.S. soybean farmers.

ASA appreciates the Subcommittee's decision to review implementation of the 2008 Farm Bill at this time. We supported enactment of this important legislation last year, and are interested in how the new programs and changes in existing programs would be developed. This matter was complicated by decisions by the last Administration that affected implementation and have reduced the amount of time available to put programs and changes in place for 2009 crops.

Pursuant to the Subcommittee's direction, ASA will not present its positions on a number of important issues that are addressed by other farm organizations with similar views. These include statements by the National Corn Growers Association on implementation of the ACRE Program, by the National Association of Wheat Growers on the new permanent disaster assistance program, or SURE, and by the National Cotton Council on changes to the payment limitation provisions of the 2002 Farm Bill. ASA has requested to be identified as supporting the statements of these organizations on those issues.

One issue we would like to bring to the attention of the Subcommittee and the full Committee is implementation of the Bioenergy Program for Advanced Biofuels, included in Section 9005 in the Energy Title of the farm bill. ASA played a lead role in asking Congress to extend the CCC Bioenergy Program which had been initiated under the Farm Security and Rural Investment Act of 2002, and we worked hard to see this Program authorized and funded.

We understand the energy title falls under the jurisdiction of the Conservation, Credit, Energy, and Research Subcommittee. However, this issue affects the viability of soybean farmers as well as the biodiesel industry, and we wanted to bring it to the attention of the full Committee and the Subcommittee on General Farm Commodities and Risk Management as well.

As Members of the Subcommittee are aware, the Rural Business-Cooperative Service of the Department of Agriculture published a Notice of Contract Proposal (NOCP) in the *Federal Register* on June 12, 2009, announcing plans to implement the Bioenergy Program for Fiscal Year 2009. ASA is pleased that the Department has moved forward to put the Program in place this year, and we are pleased with the overall nature of the Program. However, we have concerns with several provision of the NOCP that we would like to raise at this time.

Determination of Base Production

ASA is concerned with the manner in which USDA would determine Base Production of biorefineries for 2009. Plants in operation for more than 1 year prior to June 12, 2009, have a Base Production equal to their actual production during that 12 months. Base Production for biorefineries that began production after June 12, 2009 will be based on their projected production for the Fiscal Year 2009. However, for plants that initiated production less than 1 year before June 12, 2009, Base Production will be based on their nameplate capacity for a full year times the "startup/shakedown factor as determined by USDA."

ASA supports making equal payments on actual production. These criteria should apply to the actual production of plants that began operating more than a year before June 12 and plants that began operating less than a year before June 12. Differentiating between older and newer plants using actual production *versus* nameplate capacity could seriously undercut the competitiveness of the older facilities and provide a windfall to the newer ones. ASA strongly urges the Department to reconsider this provision and revise the NOCP accordingly.

Base and Incremental Production

The NOCP establishes Base Production and Incremental Production levels for existing and future biorefineries, and provides that payments for incremental production will be three times higher than for base production. Again, ASA has strongly supported providing the same payment for both base and incremental production of advanced biofuels under the Program.

We believe that the role of the Bioenergy Program is to support the competitiveness of existing and future advanced biofuels in the marketplace. The sharp rise in petroleum prices in recent years initially made U.S. biodiesel competitive with petroleum diesel, and domestic biodiesel production expanded from 15 million gallons in 2002 to 700 million gallons in 2008.

However, rising world demand for soybeans has increased soybean oil prices, and petroleum prices have decreased due to lower demand resulting from the economic recession. Domestic biodiesel production is projected to fall, from 700 million gallons to approximately 350 million gallons in 2009. Proper implementation of the expanded Renewable Fuel Standard (RFS2), which includes a minimum use requirement for biomass-based diesel, would boost demand for biodiesel. However, without assistance under the Bioenergy Program, we face the very real possibility of having a preponderance of imports meet the biodiesel use mandate established under RFS2.

Argentina has positioned their soybean production industry to focus on biodiesel exports. Argentine biodiesel is exported through the benefit of an indirect government subsidy in the form of a Differential Export Tax (DET). Under the DET system, the Argentine Government taxes exports of soybeans at 30 percent of their value and soybean oil and meal at 25 percent of their value. However, the tax on biodiesel exports is only five percent of its value. This favors exports of soybean products over soybeans. It is no surprise that Argentine soybean processors have built biodiesel plants next door to their soybean crushing facilities, and are exporting an increasing volume of biodiesel to the United States. These imports previously took advantage of the splash and dash tax credit loophole and were largely re-exported to the European market. Now that the splash and dash loophole has been closed, the Argentine biodiesel is more likely to compete with U.S. biodiesel in the U.S. market. The Bioenergy Program could help U.S. biodiesel producers remain competitive with imports.

Under these circumstances, it is critical for U.S. biodiesel producers to be treated equitably under the Bioenergy Program. To provide a payment three times as large on incremental production compared to base production would penalize domestic producers who have persevered and continued to operate their plants through difficult economic conditions. It would again undercut the competitiveness of the older facilities and provide a windfall to the newer ones. ASA will continue to work with the Department and with Congress to ensure that the Program is as equitable as possible for existing and new producers.

Mandatory Funding Level

Our third concern with the NOCP is with its misstatement, under "Funding Information" (June 12, 2009, *Federal Register,* page 28003) that "Congress appropriated mandatory funding to this program as follows: $30 million for FY 2009." As Members of the Subcommittee are aware, the 2008 Farm Bill provides mandatory funding for the Bioenergy Program of $55 million in FY 2009. In response to inquiries about the level of funding provided for this year, the Department reportedly has indicated that, in its view, the full $55 million could not appropriately be paid out during the period remaining in the current fiscal year, and that it will be made available, together with the additional $55 million provided, in FY 2010.

ASA is disturbed that the Department chose to misrepresent the decision by Congress to provide mandatory funding for the Bioenergy Program as an appropriation. We are also concerned by the decision to withhold $25 million of this mandatory funding rather than pro-rating payments of the entire amount among eligible biofuel producers. Unless these decisions can be reversed, we ask the Committee to obtain written assurances from the Department that the additional $25 million provided in the farm bill for FY 2009 will be added to the $55 million provided for FY 2010, and that the full amount of $80 million will be used under the Bioenergy Program in the coming fiscal year.

Conclusion

Again, ASA appreciates the Subcommittee holding this hearing to review implementation of the 2008 Farm Bill. ASA wishes to be identified as supporting the statements of the National Corn Growers Association on implementation of the ACRE Program, the National Association of Wheat Growers on the new permanent disaster assistance program, and the National Cotton Council on changes to the payment limitation provisions of the 2002 Farm Bill.

In addition to these issues, ASA asks the Committee to conduct active oversight of the Bioenergy Program for Advanced Biofuels to ensure that it is administered in a manner that is equitable for all producers and consistent with the intent of Congress, including using the full mandatory funding amounts provided in the 2008 Farm Bill.

HEARING TO REVIEW IMPLEMENTATION OF THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008

THURSDAY, JUNE 25, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND RISK MANAGEMENT,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m., in Room 1300 of the Longworth House Office Building, Hon. Leonard L. Boswell [Chairman of the Subcommittee] presiding.

Members present: Representatives Boswell, Ellsworth, Herseth Sandlin, Markey, Kissell, Pomeroy, Moran, and Conaway.

Staff present: Claiborn Crain, John Konya, Scott Kuschmider, Clark Ogilvie, James Ryder, Rebekah Solem, Josh Mathis, Pelham Straughn, and Jamie Mitchell.

OPENING STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM IOWA

The CHAIRMAN I call the meeting to order, and appreciate our witness being here today. He has a kind of familiar look to him. I think I know who he is. He probably knows as much about the farm bill as anybody I know, and we are glad to have this follow-up from what we did yesterday.

I do want to thank everybody for being here as we take this continuing examination of the implementation of the farm bill. I want to give special thanks to our witness, Under Secretary Miller—that has a nice ring to it—for testifying before the Committee, and I look forward to your insight into the current status of many of the new programs enacted by the farm bill.

Everyone in this room knows what a tough process the 2008 Farm Bill was. We expanded many programs essential to the safety net of our farmers and our ranchers. We also made modest reforms in cases such as ACRE and SURE programs. We created new tools for producers to manage their risk. Yesterday, as you probably know, we heard from a panel of witnesses representing major farm and commodity producer groups from across the country. We heard some things which USDA is doing very well, but we also heard about some of the obstacles producers face in signing up for programs and the different information many FSA officers are putting out. We would hope that in our process today we will hear from

you how we are going to deal with some of that and I think that we will.

I also would like to end on this point. In this country, we keep saying it, we keep saying it, we keep saying it and all of you need to do the same thing. We do have the most plentiful, safest and least expensive food in the world, and there is a reason for that because every one of us, all of you and everybody in Los Angeles, New York City or out in Hayes, Kansas, or wherever, we participate. We do subsidize our agriculture in different ways but we all get something for it. We get something big. We get the most plentiful, safest and least expensive food in the world, and we shouldn't do anything to impair that. It means something to every one of us for our nutrition and we all have to eat. So let us keep that process, education piece going. I think it is a good thing.

[The prepared statement of Mr. Boswell follows:]

PREPARED STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM IOWA

I would like to thank everyone for joining me here today as we take a thorough examination of the implementation of the Food, Conservation, and Energy Act of 2008, commonly known as the farm bill. I would like to give a special thanks to our witness, Under Secretary Miller, for testifying before the Committee and I look forward to your insight into the current status of many of the new programs executed under the farm bill.

Everyone in this room knows what a tough process the 2008 Farm Bill was. We expanded many programs essential to the safety net of our farmers and ranchers. We also made modest reforms and in cases, such as the ACRE and SURE program, created new tools for producers to manage their risk.

Yesterday we heard from a panel of witnesses representing major farm and commodity producer groups from across the country. We heard some things which USDA was doing very well but we also heard some of the obstacles producers are facing in signing up for programs and the different information many FSA offices are putting out.

I would just like to end on one point. The United States has the safest, most plentiful, and affordable food supply in the world. The programs in the 2008 Farm Bill help to keep it that way.

At this time I would like to turn it over to my good friend and colleague, Jerry Moran from Kansas for any opening remarks he would like to make.

The CHAIRMAN I am very appreciative that my good friend, Jerry Moran, is here. He didn't start the meeting without me today because he was here first, and I didn't do it to him yesterday so that kind of makes us even for now, but I would like to recognize Mr. Moran.

OPENING STATEMENT OF HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM KANSAS

Mr. MORAN. Mr. Chairman, thank you very much. May I join you in your sentiments about the importance of agriculture and your sentiments about Mr. Miller? As I indicated with Secretary Miller before the hearing began, I am very pleased with his position at USDA and look forward to working with him. Many of us in agriculture appreciate his background and experience. We have had a long working relationship with you and believe that is a good thing that USDA has you in place. We are delighted to have you here, in what I assume is your premiere with Congress, and we look forward to hearing from you throughout this session of Congress.

Agriculture faces tremendous challenges. Those seem to always be present. They don't seem to be dissipating. And we need your help and advice and we need some common sense at USDA, which I have every expectation that you will bring.

So Mr. Chairman, I am pleased to be back today and hear our second panel as we look at how do we make certain that the farm bill that we all worked so hard on is implemented in a way that is advantageous to farmers and ranchers across America. Thank you, Mr. Chairman.

The CHAIRMAN Thank you, and we will use our standard procedure as far as the other Members are concerned. We will be getting to you with your questions shortly and any statement you want to put into the record.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Thank you, Chairman Boswell, and thanks also to the Ranking Member, Mr. Moran, for your leadership on this Subcommittee. I appreciate the work you have done this week for calling these hearings and examining the progress of Food, Conservation, and Energy Act implementation. I apologize for not being able to participate yesterday, but we have been extremely busy with climate change legislation as most everyone in here knows.

I would like to welcome Mr. James Miller before this Subcommittee in his new role as Under Secretary for Farm and Foreign Agricultural Services at USDA.

He has a busy job, not only with implementation, but as the head of several key USDA offices that represent a direct link to farmers and ranchers all across America.

Yesterday, we heard from the major farm and producer groups who relayed the thoughts of our constituents in farm country, all of whom are depending on the timely implementation of farm bill provisions. While all of them commended USDA and the current Administration for their efforts so far, they also brought forth valid concerns about the work that remains to be done.

As Under Secretary Miller no doubt knows from his time spent working on Capitol Hill, the implementation of farm bill provisions according to Congressional intent is something we follow very closely on both sides of the aisle. I know his office had to clean up a bit of a mess when it came to dealing with rulemaking from the previous Administration that was inconsistent with what Congress intended. Confusing rules on payment eligibility and the definition of "actively engaged" were points that were raised yesterday. In addition, the lack of movement on a permanent disaster program has created some uncertainty with a lot of producers.

All of us have constituents who depend on USDA to capably carry out the policies set by Congress. I appreciate Under Secretary Miller's appearance today to tell us where USDA is at regarding implementation and what challenges lay ahead.

Thank you again, Chairman Boswell and Ranking Member Moran for calling these hearings and for the work you have done. I yield back my time.

So at this time, Secretary Miller, we would like for you to share what you want to share with us.

STATEMENT OF JAMES "JIM" W. MILLER, UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Mr. MILLER. Thank you very much, Chairman Boswell, Ranking Member Moran, Members of the Subcommittee. I certainly appreciate your opening comments concerning the importance of agriculture, not just to farmers and ranchers but to everyone that lives in this great country. It is an honor to appear before the Subcommittee this morning as Under Secretary for Farm and Foreign Agricultural Services at USDA.

Today I would like to discuss some of the programs delivered by FFAS through its three agencies: the Farm Service Agency, Risk Management Agency and Foreign Agricultural Service. Specifically, I would like to take this opportunity to provide an update on USDA's implementation of several provisions of the Food, Conservation, and Energy Act of 2008, the 2008 Farm Bill, and I believe many of these issues are of great interest to this Subcommittee.

One of my top priorities is ensuring that the 2008 Farm Bill is implemented as expeditiously as possible. As a farmer, I understand firsthand the importance of these programs and believe they should be implemented as Congress intended and in a way that protects our taxpayers' investment while at the same time being fair and equitable to America's farmers and ranchers. To move to some of the specific programs, let me start with payment eligibility and payment limitations. I know that was an issue that you heard about yesterday with the agricultural group panel.

In keeping with President Obama's pledge to make government more transparent, inclusive and collaborative, Secretary Vilsack reopened the comment period for the payment eligibility and payment limits interim regulation. The comment period ended April 6. FSA received over 5,000 comments. These comments are currently being reviewed in order to decide what, if any, changes will be made in the final rule effective for the 2010 program year. Our goal is to ensure that regulations are consistent with Congressional intent and are sound and fair to all producers.

Moving to another issue of importance to this Subcommittee, USDA has also reversed the decision to terminate base acre eligibility on federally owned land. Without that change, renters of Federal land would be ineligible to participate in commodity programs on that acreage, so we have reversed the decision of the prior Administration.

A program that is, I know, of great importance to the Chairman and many of the producers around the country is the new Average Crop Revenue Program, ACRE, and so in order to help farmers better manage their risks, the 2008 Farm Bill contained this optional revenue-based countercyclical program. Sign-up began on April 27, and because of the complexities of the program and also in part due to the lateness of the spring planting season, USDA extended the sign-up period until August 14 to ensure that producers had adequate time to review this program and make an appropriate decision. In order to help producers better understand how ACRE works, FSA launched an educational campaign this week. In addition, producers can visit FSA's website and utilize the ACRE calculator. Through that calculator, producers are able to insert their own farm's production information to help them make an appropriate decision to determine if ACRE is a program that will benefit their risk management needs on their own farms.

Turning to disaster assistance, the 2008 Farm Bill also created a brand-new comprehensive standing disaster program. One of my top priorities as Under Secretary is making sure that the disaster programs are implemented as quickly as possible. I have instructed FSA to expedite the implementation of these programs individually instead of waiting until all the programs are ready for publication

before allowing sign-up for any of the disaster program components.

As part of moving these programs forward as quickly as possible, I am pleased to announce that yesterday the Office of Management and Budget approved the regulations we had submitted for their review to implement the Livestock Indemnity Program. We will publish the regulations in the very near future and should be able to begin sign-up and start making payments to producers next month.

The other two livestock-related programs, the Livestock Forage Program and the Emergency Livestock Assistance Program, are moving through our internal clearance process at USDA and will be sent to OMB soon. Sign-up is expected to begin later this summer.

Concerning the Supplemental Revenue Assistance Program, the crop component of the comprehensive disaster program, those regulations will be published later in the year with sign-up to follow. So, in total we are making great progress in getting the disaster program implemented, although I fully realize that the quicker we can get these programs out to producers, the greater the benefit to our farmers and ranchers who will participate in them.

Mr. Chairman, if I might just take a few additional minutes, I would like to identify a number of topics, some of which are probably outside the specific jurisdiction of the Subcommittee, but which I believe may be of interest to Members that the agencies in my mission area are working on concurrent with the implementation of the programs that I just discussed.

First, USDA has implemented the new provisions in the 2008 Farm Bill for the direct and countercyclical programs. We have published a notice of funds availability, a NOFA, for the Aquaculture Assistance Program contained in the economic stimulus legislation, and that program is being implemented and funds are being distributed to the states.

We have also published a NOFA for the Collection, Harvest, Transportation and Storage Program under the Biomass Crop Assistance Program. USDA has announced a program to allow for the reenrollment of the most highly erodable land contained in expiring Conservation Reserve Program contracts. In addition, three components of the CRP program, as reauthorized by the 2008 Farm Bill, those that are not subject to an environmental impact statement under the National Environment Policy Act, or NEPA, have cleared OMB and will be published in the next day or so. The regulations for the Farm Storage Facility Loan Program are being drafted concurrent with an environmental assessment also being required under NEPA.

We have implemented the revised Dairy Product Price Support Program. USDA has already purchased over 250 million pounds of nonfat dry milk. Secretary Vilsack has announced that over 200 million pounds of these government-owned stocks will be provided to domestic and international food assistance programs. USDA has also implemented the revised Milk Income Loss Contract Program and provided over $400 million in payments to dairy producers as of this date. And finally, consistent with our WTO commitments, we have reactivated the Dairy Export Incentive Program.

Mr. Chairman, I recognize the decisions that we make in Washington affect the livelihood of America's farmers and ranchers, and I am committed to ensuring that the farm bill provisions within my mission area are implemented properly, fairly and as quickly as possible. I truly appreciate the opportunity to testify before you today, and I look forward to working with all the Members of this Subcommittee as we continue our hard work to ensure that USDA is responsive to the needs of American agriculture.

This concludes my summary of the statement I submitted to the record, and I certainly will be glad to answer any questions you or Members of the Subcommittee may have. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF JAMES "JIM" W. MILLER, UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Chairman Boswell, Ranking Member Moran and distinguished Members of the Subcommittee, I appreciate the opportunity to discuss the programs delivered by my mission area in the U.S. Department Agriculture (USDA). As Under Secretary for Farm and Foreign Agricultural Services (FFAS), I oversee three agencies: the Risk Management Agency (RMA), the Farm Service Agency (FSA), and the Foreign Agricultural Service (FAS). Specifically, I would like to take this opportunity to provide you an update on USDA's implementation the Title I provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) and other provisions in my mission area that are of interest to this Subcommittee.

2008 Farm Bill Implementation

One of my top priorities is ensuring that the 2008 Farm Bill is implemented as expeditiously as possible following the intent of Congress as enacted in the statute. As a farmer I understand firsthand the importance of proper implementation of farm programs. Farm programs should be implemented in a way that Congress intended, protects taxpayer's investment, and is equitable to America's farmers and ranchers. As public servants we must remember that the manner we implement farm programs affects the livelihoods of producers.

Some of you may remember me from my former life as a staff member of the Senate Budget Committee. In that capacity I have provided assistance to Congress as it crafted numerous pieces of legislation. During that time, I gained a tremendous amount of appreciation for the work and dedication of the Members of this Subcommittee. Your efforts created a farm bill that provides new options for producers to manage risk, strengthens our nutrition programs and expands our energy programs. However, this is my first time representing FFAS to discuss implementation of the farm bill enacted by Congress. I have been amazed and pleased by the dedication and expertise of the USDA employees who are crafting the regulations necessary to implement the 2008 Farm Bill. Their attention to detail and willingness to work long hours is paying dividends, regulations implementing the disaster assistance and other provisions of the farm bill are being expedited and I will talk more about that later.

Payment Eligibility and Payment Limits

In keeping with President Obama's pledge to make government more transparent, inclusive, and collaborative, Secretary Vilsack reopened and extended the comment period for the payment eligibility and payment limits interim regulation, which was published in the *Federal Register* on December 29, 2008. Reopening this regulation allowed farmers and other interested parties the ability to offer input on a topic that affects producers across the United States. The comment period ended April 6, 2009 and FSA received 5,060 comments. Comments are currently being analyzed and a decision on what, if any, changes will be made in the final rule effective for 2010. The final rule will ensure that our policies follow Congressional intent and are sound, consistent, and fair to all producers.

We also reversed the decision to terminate base acre eligibility on federally-owned land. Without the change, it would have resulted in renters of the land being ineligible to participate in Direct and Countercyclical Payments (DCP) or the Average

Crop Revenue Election (ACRE) programs on that land. This would have caused an unintended economic impact on private operators.

Average Crop Revenue Program (ACRE)

In order to help farmers better manage their risks, the 2008 Farm Bill created the Average Crop Revenue Program (ACRE) a new, optional revenue-based countercyclical program. Farmers are provided the choice between enrolling in the traditional commodity programs or ACRE. Sign-up for ACRE began on April 27, 2009, and continues until August 14, 2009. As of June 10, 2009, 478 farms have elected and been approved to participate in ACRE. Because ACRE is a new program, many producers may be waiting until later in the summer to decide whether to enroll.

Ten Acres or Less

The 2008 Farm Bill eliminates direct payments, countercyclical payments, or ACRE payments to producers on farms with 10 base acres or less unless the farmer is a socially disadvantaged farmer or rancher, or a limited resource farmer or rancher. Last year FSA prohibited producers from aggregating or combining farms with fewer than 10 base acres using the reconstitution process, in order to create a farm with more than 10 acres of base; thereby making it eligible for payments.

On November 11, 2008, FSA amended its Handbook on Policy and Guidance for reconstitutions to remove the restrictions that had been put in place prohibiting the combination of farms with fewer than 10 acres of base. Following that amendment, farms with fewer than 10 base acres may be combined, provided all other rules governing reconstitutions are met.

Marketing Assistance Loans and Loan Deficiency Payments

The 2008 Farm Bill contained modifications to the marketing assistance loan and loan deficiency payment provisions. These programs support eligible producers of grains, oilseeds, cotton, pulse crops, honey, wool and mohair. Regulations implementing these programs were published on April 7, 2009. New loan repayment rate provisions, including a mandatory option based on average market prices of the previous 30 days, and a discretionary option based on a 5 day moving average of market prices (for most commodities), were implemented on April 15, 2009.

Dairy

As everybody knows, the dairy industry has been one of the hardest hit sectors of agriculture. Dairy producers have been caught between high input costs and depressed prices. For example, April 2008 milk prices averaged $18 per hundredweight (cwt). This spring, producers were receiving less than $12 per cwt. In order to provide assistance as quickly as possible, FSA published regulations re-authorizing the revised Milk Income Loss Contract (MILC) program on December 4, 2008. MILC compensates dairy producers when domestic milk prices fall below a specified level adjusted by a percentage of the national average dairy feed ration cost. MILC program sign-up began December 22, 2008. On April 1, 2009, FSA began issuing MILC program payments to dairy producers. As of June 11, 2009, over $405 million had been issued to dairy producers through the MILC program.

In addition to MILC, USDA has purchased over 250 million pounds of nonfat dry milk (NDM) under the Dairy Product Price Support Program. Secretary Vilsack has announced that approximately 200 million pounds of NDM will be transferred from the Commodity Credit Corporation to USDA's Food and Nutrition Service for use in domestic feeding programs.

Finally, on May 22, 2009, USDA announced the reactivation of the Dairy Export Incentive Program (DEIP) for the export of 150 million pounds of nonfat dry milk, 47 million pounds of butterfat, and 7 million pounds of cheese. The market-disruptions caused by the reintroduction of dairy export subsidies by the European Union left the United States with little choice in order to keep our domestic dairy industry from being artificially displaced by EU products in certain key markets. DEIP was reauthorized under the 2008 Farm Bill and helps U.S. exporters meet prevailing world prices and encourages the development of international export markets in areas where U.S. dairy products are not competitive due to subsidized dairy products from other countries. Since announcement of the DEIP to date (June 12, 2009), bonuses for the export of 16 million pounds of nonfat dry milk and 42,000 pounds of cheese have been awarded.

Rice

The 2008 Farm Bill required that base acres of rice on a farm be apportioned or divided between long grain rice and medium grain rice. Owners completed their desired designations by June 1, 2009.

Planting Transferability Pilot Project (PTPP)

A new program in the 2008 Farm Bill is the Planting Transferability Pilot Project (PTPP). This program permits cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes to be planted on base acres enrolled in DCP or ACRE, if the crop is grown for processing. FSA administered sign-up for PTPP during the period of February 3 to March 2, 2009. As a result of the 2009 sign-up, we received requests for participation on 11,000 base acres. The 2010 sign-up period for PTPP will begin on December 1, 2009 and end on March 1, 2010.

Farm Storage Facility Loans (FSFL)

In addition to the commodity programs contained in the 2008 Farm Bill, FSA also administers the Farm Storage Facility Loan Program (FSFL). The 2008 Farm Bill contained modifications to FSFL which authorized loans to be made for additional types of commodities, including biomass intended for biofuel production. FSA is continuing to make loans under the prior authorities and is developing program regulations to fully implement the new authorities. Currently, FSA is in the process of conducting an environmental assessment of FSFL under the National Environmental Policy Act (NEPA). Two public meetings were held in April 2009 as required by NEPA. The assessment is scheduled for completion this year.

Disaster Assistance

One of the biggest changes in the 2008 Farm Bill is the creation of a standing disaster program. However, a disaster program that is not implemented provides no assistance. That is why one of my top priorities as Under Secretary is making sure that the disaster programs are implemented as quickly as possible.

I have asked FSA to expedite implementation of all aspects of the Supplemental Agricultural Disaster Assistance provisions of the 2008 Farm Bill. In order to implement these programs as quickly as possible, I have instructed FSA to implement these programs individually instead of waiting until all the programs are ready before allowing sign-up for any program. Sign-up for the three livestock-related programs—the Livestock Indemnity Program, Livestock Forage Program, and the Emergency Livestock Assistance Program—will begin soon. Sign-up for the Supplemental Revenue Assistance Program—the crop-focused counterpart to the livestock programs I just mentioned—will begin later in the calendar year.

As I visit with farmers and ranchers from all parts of the United States who have suffered varied disasters, I fully understand the need to provide assistance as quickly as possible.

Crop Insurance

In administering the Federal Crop Insurance Program, RMA has completed several requirements laid out by the 2008 Farm Bill, and made significant strides toward satisfying the rest. Several programmatic changes were made immediately.

As required by the 2008 Farm Bill prior to July 1, 2008, the administrative and operating expense reimbursement paid to approved insurance providers was reduced by 2.3 percentage points, the Catastrophic Coverage (CAT) loss adjustment reimbursement rate was reduced from eight percent to six percent, and the CAT fee charged to producers was increased from $100 to $300. Also, in January 2009 the Federal Crop Insurance Corporation (FCIC) Board of Directors approved and implemented a new process for the submission of proposed new products under Section 508(h).

RMA has contracted for studies to research and develop many of the programs required by the 2008 Farm Bill. These include contracts for crops like switchgrass and camelina, the development of a pilot program for sesame production, and development of a pilot program for grass seed production in Minnesota and North Dakota. In addition, RMA is currently pursuing studies to evaluate a skip-row cropping practice for corn and sorghum, and an apiary pilot program. Last, RMA is working on the price election for grain sorghum.

RMA has awarded a contract for a study of current underwriting, pricing and rating (surcharge) methods applicable to organic production practices. The preliminary price report is due to RMA in the very near future. RMA is also in the process of finalizing reports related to ongoing evaluations and issues tied to perennial crops and declining Actual Production History (APH) yields.

RMA is also preparing for the possibility of a renegotiation of the 2011 Standard Reinsurance Agreement (SRA). The agency is currently examining the issues, options and alternatives that could be considered within the next SRA, consistent with the President's budget proposal, recommendations in the recent Government Accountability Office (GAO) report on potential savings opportunities, and guidance suggested within the 2008 Farm Bill. To be successful, RMA needs maximum flexi-

bility in its ability to address appropriate savings opportunities while ensuring the integrity of the farm safety net and crop insurance delivery system. As provided in the 2008 Farm Bill, the Committees will be briefed prior to beginning negotiations.

Farm Credit

For many struggling farmers and ranchers USDA's farm loans provide support to family farmers to continue farming. During economic turmoil these programs become even more important. USDA's farm credit programs provide credit when certain disadvantaged farmers and ranchers, as defined by statute, are unable to obtain credit from commercial sources.

This year USDA has experienced loan demand increases that we have not seen in over 20 years. In some categories demand has increased by over 80 percent from last year. As of May 30, 2009, 45 percent of direct operating loan applications are from new customers; normally, this number is around 20 percent. To provide some perspective; through June 15th of this fiscal year we have obligated $3.15 billion; last year we obligated $2.44 billion during the same time period. The funding provided by the American Recovery and Reinvestment Act of 2009 allowed us to provide assistance to 2,636 farmers.

In addition to the increases in the amount of dollars obligated this fiscal year, there is an additional $400 million in approved applications that are waiting for funding. Funding provided by the Supplemental Appropriations Act of 2009 will allow the agency to provide assistance to these additional, approved applications. FSA will ensure that this additional funding goes to producers as soon as possible.

Conservation Reserve Program (CRP)

In addition to commodity programs, disaster programs, and farm loans, FSA also administers the Conservation Reserve Program (CRP). The 2008 Farm Bill included several changes to the CRP. These changes are scheduled to be implemented through two rules; first we will issue a rule that will implement new statutory provisions. This will include provisions addressing the expansion of eligible land for the Farmable Wetlands Program, the 32 million acre enrollment cap, the addition of cost-share payments for tree thinning, and changes to income limits for determining eligible producers.

The second rule will implement those provisions that require an Environmental Impact Statement (EIS), including updating crop history eligibility to include 4 of the last 6 years between 2002 and 2007; exempting Conservation Reserve Enhancement Program (CREP) and continuous CRP acres from the county enrollment cap of 25 percent of cropland; transition incentives for beginning, socially disadvantaged, and limited resource farmers and ranchers; and routine grazing. The second rule is scheduled to be published when the EIS is completed.

The 2008 Farm Bill mandated that no more than 32 million acres are enrolled in CRP. In 2009, 3.9 million acres of CRP are scheduled to expire. In an effort to maintain a vigorous CRP within the Congressionally mandated CRP cap, FSA is offering extensions for the 1.5 million acres that fall within the top 30 percent of the environmental benefits index, or have an Erodiblility Index of 15 or greater. This will more tightly focus CRP on lands that truly need conservation assistance. Based on previous CRP extensions, approximately 1.2 million acres are expected to be extended for 3 to 5 years.

A general CRP sign-up is not scheduled for Fiscal Year 2009. However, producers may continue to enroll relatively small, highly desirable acreages, including land that is not extended, into the continuous CRP.

Energy

On May 5, President Obama asked USDA to expedite the biofuels provisions of the energy title of the 2008 Farm Bill within 30 days, including the following:

- Providing loan guarantees and grants for biorefineries;
- Expediting funding to encourage biorefineries to replace the use of fossil fuels in plant operations;
- Expediting funding to encourage production of next-generation biofuels;
- Expanding the Rural Energy for America Program; and
- Providing guidance and support for collection, harvest, storage, and transportation in biomass conversion facilities.

I am pleased to say that USDA met its 30 day deadline to help produce more energy from homegrown, renewable sources. The programs highlighted by President Obama included a component of the Biomass Crop Assistance Program (BCAP) a program which is under my purview. FSA rose to the task and developed a Notice of Funding Availability to implement certain provisions of BCAP for Fiscal Year

2009. The notice was published in the *Federal Register* on June 11, 2009. FSA is continuing with the development of regulations to permanently implement the program.

The funding that was made available for BCAP provides compensation for the collection, harvest, storage, and transportation of biomass intended to meet the country's energy needs in a more sustainable manner. The program will provide financial assistance for delivery of eligible biomass material to conversion facilities that use biomass for heat, power, bio-based products or biofuels. FSA will provide matching payments for collecting, harvesting, storing and transporting eligible materials at a rate of $1 for each dollar per dry ton paid by a qualified biomass conversion facility for the biomass. The matching payments will not exceed $45 per ton and material providers will be eligible for up to 2 years of payments.

IT Stabilization/Modernization

Aging information technology, infrastructure and equipment at FSA adversely impacts, and ultimately threatens the ability to reliably deliver fundamental services to farmers, ranchers and producers. IT modernization will foster applications and systems that build upon business process transformation to provide a faster, more secure and more accurate means to deliver services to our FSA customers.

Our Stabilization initiative is adding stability to the existing IT infrastructure used to deliver and support FSA customers today. However, it also supports the modernization effort by helping to lay the foundation for the IT modernization that will follow.

The combination of farm bill funding and Recovery Act funds will allow FSA to continue progress toward the goal of improving the delivery of farm program benefits, enhancing the security of producer information, and ensuring the integrity of taxpayer dollars used by FSA in support of America's farmers, ranchers and producers.

Conclusion

I recognize the decisions that we make in Washington affect the livelihood of America's farmers and ranchers and I am committed to ensuring that the farm bill provisions under my mission area are implemented properly and as quickly as possible.

I appreciate the opportunity to testify before this Subcommittee today, and I look forward to working with you, Mr. Chairman, Mr. Ranking Member, and all the Members of this Subcommittee as we continue our hard work to ensure that USDA is responsive to the needs of American agriculture. This concludes my statement. I will be glad to answer questions you may have.

The CHAIRMAN Well, thank you, Mr. Secretary. When did you actually get into the chair as Secretary?

Mr. MILLER. I was sworn in as Under Secretary the first week in April.

The CHAIRMAN I guess if we had had our choice, we would have him down there in January, but we didn't have a choice on that and I realize that Secretary Vilsack was scrambling to get folks like you aboard and so we are glad you are there, and I like what I have heard already.

I think you answered this question, but my first one would be, at yesterday's hearing the testimony of Mr. Litterer as Chairman of the National Corn Growers was critical towards the Department for their efforts to train FSA employees to administer the new farm programs created by the bill, and I think I heard you say that you just recently launched a training program. So you might want to say more about that. In particular, he was concerned about the cancellation of the national field training. If that is what you are talking about, it is great. Talk to us about what is being done if you would, a little bit more, and how you are going to implement the programs and why national field training efforts have been put off in some cases. Where are we at on that?

Mr. MILLER. Well, let me tell you a little more fully what we are doing. Obviously the ACRE program being brand new and rather

complex, because of the varying trigger points that are involved in that program, truly requires that individual producers take a hard look at the program and weigh those decisions as they affect their individual farms. It is quite likely that what may be appropriate for a farmer in one particular area may actually not be the best choice for even his neighbor. So it is really an individual choice and it really requires some pencil pushing by the individual operators. As of yesterday, we had 946 ACRE contracts signed by producers. That is 100 percent increase roughly over the number we had when I submitted my formal comments, but still, that is a relatively small number and is somewhat indicative of a couple of things: first, still a lack of understanding among farmers about what the ACRE program really means; and second, I do think that the late spring season in many parts of the country, particularly in big parts of the Corn Belt, have delayed the ability of producers to actually push the pencil on this program and make those decisions. That is certainly——

The CHAIRMAN On that point, again, I appreciate what you just said. I was going to ask you about that next. But on that point, are the offices out there where they work across the counter and responding directly to producers, are they getting up to speed in your opinion, or is that a process that is on going? Tell us where we are on that.

Mr. MILLER. That is also a process that is on going. Again, the complexity for farmers is equally as great a challenge for our people, particularly at the county level, in terms of helping farmers make the correct decision without attempting to influence that decision. So as part of this educational process, not only are we reaching out to producers but we are also providing additional information to our county offices so that they can be of greater assistance as producers come in with questions or to sign up for that program. We have provided mass mailings to producers. FSA Administrator Caruso is actually touring the countryside, providing information to producers on the ACRE program. We are actually going to be working in conjunction with DTN to put on a webinar concerning the ACRE program on July 1st, and we are encouraging our county offices to hold meetings with producers in order to share experiences, determine what kinds of information are necessary, again, to help the producer make an appropriate decision for their farm. Also, our ACRE calculator, which is a relatively simple spreadsheet program, we think will be of great assistance to those stakeholders. In addition, through the land-grant universities and many private sector partners, a great deal more about ACRE is coming out every day. So again, we extended the sign-up date because of the complexity. We think this provides producers an adequate time to consider the ramifications of that program for their farms.

The CHAIRMAN An interesting point; you said 946, about double the sign-up for ACRE. Do you have any data—you might have—how many of the farms or acres that were enrolled in the traditional direct and countercyclical program last year have not yet made a choice?

Mr. MILLER. Well, we have, I believe, about 1.3 million operations that participate in our direct and countercyclical programs. Under the provisions of ACRE, any of those producers at this point,

or any point until sign-up is concluded, can make a decision to switch from the direct and countercyclical program to the ACRE program. I would expect that a large percentage of the 946 that have made that decision were previously signed up for the direct and countercyclical program. So they have flexibility to move into ACRE but it is also important for farmers to recognize that once they make that election, that election is permanent through the end of the 2008 Farm Bill, so it is an irrevocable election.

The CHAIRMAN Okay. Thank you very much.

Mr. Moran.

Mr. MORAN. Mr. Secretary, thank you again for being here. You have answered one of my questions, the Livestock Indemnity Program. We have been anxious for those rules and regulations and I appreciate the announcement that you made this morning. We have talked, several Subcommittee hearings ago, in regard to the sorghum price election. It is section 12009 of the 2008 Farm Bill. There is a provision in there that ERS, to my knowledge, has not yet released the data as directed by that legislation, and most of the Members of this Subcommittee earlier sent a letter to Secretary Vilsack asking that that be done, and do you have a status report, an update? What is the holdup in providing the information required by the 2008 Farm Bill?

Mr. MILLER. Well, to my knowledge, the study on the sorghum price election is in place, and RMA is working in conjunction with ERS to evaluate the implications of that study and hopefully we will be able to report to you in the not-too-distant future those results as we work with the sorghum industry.

Mr. MORAN. Am I wrong in my thinking that there is data that was required to be released regardless or in advance of that study?

Mr. MILLER. It is my understanding that it isn't a problem so much with the data as it is the growers' requests for ERS to release their model from which data would have been generated.

Mr. MORAN. The Chairman tells me that we are going to have an opportunity for a second round of questions. I will make sure you understand that is still, at least on the part of the sorghum growers, believed to be missing and I may come back to you in my second round of questions.

The other topic I wanted to make sure I raised with you was related to the SURE program. We have had some real issues in Kansas related to SURE on failed wheat acres, the double-cropping issue. I know that we have been in conversation with you about this topic, just a series of things that seem to be problems. Many farmers in the freeze-affected areas did not anticipate planting a double crop because they expected to take their wheat to harvest. Therefore, farmers never expected the need to purchase NAP insurance, and when the wheat froze, it was past time for NAP policies to be issued. That is one of the problems the farmers faced.

The second is that they were never aware that FSA—many farmers were never aware that FSA approved double-cropping practices in counties where RMA had not done so. We have 45 counties in Kansas that were approved by FSA but not by RMA. A third problem in trying to comply with the requirement to have insurance, even farmers that were aware of the NAP requirement and purchased NAP found that because of NAP's low insurance guarantee,

purchasing a NAP policy reduced their SURE guarantee. It sent a signal that, therefore, because of the unattractive economics that they shouldn't plant a double crop.

And finally, it seems rather clear to me that FSA is prohibited from selling NAP for commodities where the policy of crop insurance is available. My understanding is that this Committee staff has worked with USDA trying to find some solutions to the double-cropping NAP issue. I think USDA has rejected the suggestions. And the two questions that I would raise on this topic at the moment are, why is it that FSA continues to offer NAP policies despite what seems to be a prohibition against doing so, and second, will FSA issue a new handbook with its state offices to coordinate this double-cropping practice with RMA?

Mr. MILLER. Well, thank you for the question, Congressman. Let me see if I can answer it without creating even more confusion over this very difficult issue, because I believe it is a situation where not only farmers are unaware of the double-cropping issue as it relates particularly to Kansas and Oklahoma as opposed to other more traditional double-cropping areas in the country. So let me first of all clarify one element before we get specifically into the double-cropping issue. In terms of those counties that are not approved for double cropping either by RMA or by FSA, a producer that would have a failed crop and plants a subsequent crop will not be penalized in terms of their SURE participation, assuming they met all of the other eligibility requirements. In other words, that subsequent crop in a single-crop county will be treated as some have characterized as a ghost crop. It will not count in any form or fashion. So for the vast majority of counties in the country and a significant number of counties in your state, we believe we have resolved that issue in a way that is extremely fair to the producers who unfortunately suffered significant crop loss this winter.

As we look at the double crop situation, particularly as it relates to Kansas and Oklahoma, we have, again, while trying to follow the specific statutory language tried to find ways to accommodate what seems to be a unique and difficult situation as it relates to many of your producers. So let me go through where I believe we are today. First of all, when this issue was first raised by you and Mr. Lucas with us, we went back to the states and asked them to review whether the decisions to provide a double-cropping designation and for FSA to be able to provide NAP coverage on the second crops was in fact consistent with their authority and was appropriate for those areas, and those reviews will actually be ongoing. If it was determined that it was indeed appropriate, then what we have provided for within the statutory language is for producers to seek equitable relief from the state FSA committee. Under the equitable-relief provision, a producer would be able to pay the NAP fee even though it is well past the time that that fee would have to be paid in order to receive actual NAP coverage on that second crop, a producer would be able to pay that NAP fee, and while that would not make them eligible for NAP coverage, it would ensure their ability to participate in the SURE program. So just by paying the fee, producers who are in a double-crop county would be eligible for the SURE program. So that is one option that is available to them and it is our expectation that the vast majority of producers

who seek equitable relief under these conditions would quite likely be granted that relief. But that doesn't mean that everyone is automatically going to be granted equitable relief and they will individually have to apply for it.

In addition, as we continue to look and review this issue, we are concerned that we may have been in the position where we were offering NAP coverage through FSA in areas that really were not appropriate for double cropping. If that turns out to be the case, that would be an error that we have made, not an error that farmers who happen to produce crops in those counties made. And, we would make an appropriate adjustment as we look at their participation in the SURE program.

The final option, and I believe this is an option that can have a great deal of benefit to your producers who in some ways feel that they have kind of been trapped into a situation which they didn't even realize existed; is, we will allow producers on an individual basis to once again seek equitable relief if they can demonstrate that even though they may be in a designated crop area, they do not have a history of double cropping. And I mean double cropping in the sense that traditionally they would plant, for instance, a wheat crop and in that same crop year would traditionally plant a second crop such as sorghum following the wheat harvest. So a producer in one of those areas that planted a wheat crop, it failed and he subsequently planted sorghum or some other crop and could demonstrate that he did not have a history of double cropping can again seek equitable relief and on an individual case-by-case basis. We will review those decisions and could potentially provide that grower relief so that his subsequent crop again is treated as a so-called ghost crop.

Mr. MORAN. I appreciate your response and I may follow up with a couple of questions if I get a second opportunity for questioning. Thank you, sir.

Mr. MILLER. Thank you.

The CHAIRMAN This is a good discussion. The chair would like to recognize the gentleman from North Carolina, Mr. Kissell.

Mr. KISSELL. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for being here today.

This is my rookie time in Congress and one of the first issues that came up, and the Chairman and I had an opportunity to talk about this this morning, was the poor state of the computer network in USDA and the efforts that have been made to improve the computers. As our discussions take place this morning, it is obvious that there is increasing complexity of communication of programs. Yet, we still have evidently a very old computer network that we are asking our farmers to communicate with and others departments to communicate with. I am just wondering in your time here if you have had an opportunity to look at this situation and any updates as to possibilities of how we might be able to go there.

Mr. MILLER. Congressman, you have raised an issue that is of great importance to this Subcommittee and to the House Agriculture Committee as a whole, and something that I am very concerned about as we attempt to efficiently and appropriately deliver the many programs that the Farm Service Agency is required under law to deliver and is tasked with making sure that we can

get these programs out the door, get whatever benefits producers are eligible for to them as quickly as possible. Yes, we have a very serious IT problem within FSA and I believe those of us at the Department of Agriculture having worked with Members of both the House and Senate Agriculture Committees over the last several months have finally reached an agreement that we have a serious problem that is affecting the business that we are about. So we are taking a number of steps, recognizing that we are not in a situation where USDA can just go down to a retail outlet and buy a bunch of computers and we are up and running. This is a very complex situation, both in terms of the breadth of the responsibilities that FSA has in terms of the complexity of the programs that we administer, and certainly in terms of the increasing security needs that we have as a government agency in protecting what really are many of the financial records of our producer customers.

So let me give you a brief update as to where we stand right now. Our modernization program, the acronym MIDAS, really evolves around three goals: first, maintaining the current system so we are able to provide and deliver on the programs that are under the responsibility of FSA, and that is taking an increase in investment. We are dealing with a system that is at least 20 years old, a system that already has had a record of failing from time to time. But we are not going to be able to implement a brand-new system overnight so we have to maintain that system, we have to be able to deliver on our responsibilities that we have to today, and we are working very hard to ensure that we are capable of doing that. The second component is stabilization of the existing system. As I indicated, we have collected a significant amount of data from producers over the years that is critical as we move forward with existing and new programs that Congress or the Department may implement. One thing we can ill afford to do is lose the ability to access that data as we move forward with a new system, and at the same time, again, we need to ensure that we can protect the security of that data. So that is the stabilization component. And then the third component is developing the software as well as providing our offices with the appropriate hardware in order to implement a new system. This all has a significant cost that will be requiring appropriations over a number of years. We estimate that the total cost of maintaining the current system, the stabilization component and implementing a new system will be approximately $450 million. The Recovery Act provided $50 million toward that effort, and we have already obligated about $6.5 million and we do expect to obligate the balance of those funds toward ensuring that we are making headway in creating a new system. In order to break down that Recovery Act spending, about $31 million will be used to upgrade and improve the capacity, the reliability and the performance of the web-based program delivery system that we have now, about $19 million is going to be used to help streamline FSA's business processes and develop an effective, long-term IT system.

In addition to that and for the first time, President Obama in his budget submission to Congress provided for an additional $67.3 million toward accomplishing these same goals, so I believe the Administration and Congress now for the first time are truly on the

same page. I think we can make significant headway. We certainly look forward to working with the Members of the Subcommittee as the system continues to evolve. But, we all recognize not only is there a great need to do this but as we look forward to the future, it is critical for our farmers and ranchers; it is critical for USDA in terms of ensuring its ability to deliver programs appropriately that we do not see this process stalled in any way; that we continue to make progress year to year with the goal of getting a brand-new system implemented within a reasonable amount of time and implemented in a way that we reflect the 21st century both in terms of our constituents, our stakeholders' ability to access the various services and programs that FSA provides; and also the ability to streamline many of our management and program processes throughout USDA including a system where we can share information with the Risk Management Agency in an effective manner, where we can share information with the NRCS and any other agency that has implications for our stakeholders and in effect cuts across a number of agency responsibilities.

Mr. KISSELL. Thank you. Mr. Chairman, just one real quick question. If you have all the resources you need, any estimate of the time—how long it would take—to get to a reasonably good network?

Mr. MILLER. Let me turn to my staff and see if they have any ballpark figure. I do not, Congressman.

The CHAIRMAN Why don't we just hold on that one, Larry, just for a second and let him do that. On the issue, Mr. Secretary, let your staff talk about that a minute, but you hit a key point, because where you have been and what you have done that this Committee has recommended in the farm bill, as well as the stimulus package to get something going here, and it goes back to all of us, as we all have this vested interest we talk about in food that I don't want to take the time to repeat. But, when we have FSA and NRCS can't talk to each other by computer, this is absurd, and it really puts a big barrier in the road and then getting information out, and what you just said, very appropriately, about having the confidence of the producers to share all that information. We have to get this upgraded and it has cost a lot of money, but it is not going to get cheaper and it has a tremendous impact on our ability to do what we do in agriculture to feed everybody. So, a great question, Mr. Kissell, and if you have answer to that least piece now, go ahead and give it, then we will move on.

Mr. MILLER. Thank you, Mr. Chairman. Congressman, currently we are short about $254 million of completing the project, which we expect is going to take 3 to 4 years to finalize. So, yes, we are going to need additional resources and it is, as the Chairman indicated, not an insignificant amount of money. I believe in the longer term, and I am not sure the longer term is necessarily that far away because we needed really to do this years ago, but in the longer term this will provide significant benefits to our stakeholders, and in addition, certainly improve the level of efficiency and program delivery at the Department. I think it is an investment that is well worthwhile and certainly we, again, look forward to consulting with you on a regular basis in terms of the progress that we are making. I should note that our Chief Information Offi-

cer at FAS brings a wealth of experience from the private sector and is truly a very important asset as we move forward with what is a very significant IT modernization program. So I am confident we can do it. I am confident that the benefits will be significant once we get this process done, but again, we are going to need to continue to work very closely together to ensure that the resources are in fact made available as they are needed so we don't impede this progress.

The CHAIRMAN Well, on that point, before we move on to Mr. Conaway, your last statement is very key, and I am going to ask you, and I know you will, I know you, you have to work up your chain to OMB and we have to keep ours going, and I know our Chairman is all for it and I know the Ranking Members are for it. We can't keep putting this off, and with the other things we have been doing, we can surely do this because it affects every man, woman and child in the country, when it comes right down to it. So we are with you on it, and if there is something we need to do different than we are, tell us and let us work together and let us see if we can't crank it up a little bit. Because, as you have said in another way, we should have done this yesterday, and so we are just going to press on and it is a big one.

I would like now to recognize the gentleman from Texas, Mr. Conaway.

Mr. CONAWAY. Thank you, Mr. Chairman.

Mr. Miller, welcome to the team. I have two or three little nits and nats and then I want to talk about the broader subject. Yesterday during the hearing we had a gentleman testify, and I wasn't able to flush out what he meant but he said that if a tenant went into an FSA office to sign up for ACRE and the forms were printed to do that, that he needed to go have the owner sign or other folks, that that somehow locked up the system arbitrarily, and like I said, I don't understand. If you wouldn't mind getting your staff to check into that testimony yesterday and pull that in because barriers to ACRE sign-up is not something that we ought to be promoting. So if you could commit to checking on that testimony from yesterday and flushing that out?

Mr. MILLER. Sure.

Mr. CONAWAY. I apologize for not knowing more about it.

Under the SURE program, as you look at defining farms, the share-rent landlord-tenant farms, if you wouldn't consider giving them the same kind of treatment that the partnership would get. This is going to be a little different than what FSA has looked at, but this is a new program and we may have an opportunity to improve it by looking at a broader definition of *farm* than would normally be there.

The other concern under SURE is the pricing for certain crops like peanuts that have an arbitrary price that their overall prices may be inverted from what the SURE could pay out, and so looking at ways within your discretion or USDA's discretion at making modifications to the prices with the various crops to make sure that SURE is in fact an umbrella policy that does work on the process.

And then in a broader context, given that you are writing a lot of new regulations, there is always this tension between legislative intent, our interpretation of what legislative intent was and your

interpretation of what legislative intent was and how do we reconcile, how do we maintain an open dialogue between us so that we get to the right answer with respect to what the intent was last year when was passed this bill. So if you could probably speak, just a couple comments on the SURE thing and then spend the rest of your time on this legislative intent issue.

Mr. MILLER. Well, thank you, Mr. Conaway. Concerning the SURE definition of a farm, we believe the statute is actually pretty clear on how we should define a *farm*. It is a whole farm program that covers a producer or a landlord's farming operations in all counties, in all states and it is a revenue program. So it is indeed possible that you could have a situation where an operator who may have multiple farms and multiple landlords could be eligible for a SURE payment because his whole farm revenue was reduced due to natural disasters, while any individual landlord because their portion of that more aggregate farming operation did not suffer a loss. So we believe the intent of Congress in the statute is relatively clear in that regard.

In terms of SURE prices, we certainly are going to do the best job we possibly can to determine what is the national average market price for the year, and of course, that means that the final determination of SURE benefits will effectively be delayed until the end of the marketing year for the crops that a producer has. In the case of peanuts, both for the peanut program and then prospectively as well as for the SURE program, we are beginning to collect NASS data on peanut pricing. We believe that will aid us in ensuring that we can adequately reflect the prices for peanuts throughout the country.

I think you raised a very good point concerning legislative intent, and I can tell you as a former staff member in Congress and I can also emphasize that the Secretary agrees that it is extremely important, as we implement these programs that we do the best possible job to reflect Congressional intent as it is contained in the statute. In my view, that means in those areas where there may be questions, we need to continue our consultation with Congress and we certainly are prepared to do so. I can pledge to you that I or my staff are willing to engage in those discussions at any time, any place, whether it is on an individual basis or formally or informally with Members of the Agriculture Committee. It is critically important that we do continue to work together, that we have a good understanding of what these programs mean, even in those instances where we may in fact disagree.

Mr. CONAWAY. Well, Mr. Miller, thank you. I appreciate that pledge, and we will pledge it as well on our side of the table. I do think you bring an interesting perspective to the table, having worked on our side of the table from that and you may have a little more sensitivity to our angst than someone who has not been in the Legislative Branch. So I appreciate that pledge and I look forward to working with you and your staff.

Mr. Chairman, I yield back.

The CHAIRMAN Another good discussion. Thank you.

The chair would now like to recognize the gentlelady from South Dakota, Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman, and thank you, Under Secretary Miller. I want to thank you too for the opportunity we had to visit a few weeks ago and emphasize how important the President's disaster declaration is to the 14 counties in South Dakota that had suffered late blizzards and livestock losses, as well as flooding in the northeastern part of the state as well.

I would like to seek a little bit of clarification from your written testimony. I know that you have specifically mentioned the Livestock Indemnity Program. Now, did you state that next month payments would start being made out of that program, or that the rules would be finalized and sign-up would begin?

Mr. MILLER. Congresswoman, my oral testimony is an update over the formal testimony that was submitted. Yesterday OMB cleared the Livestock Indemnity Program. We will be publishing the rule over the next few days and we will be prepared to engage in sign-up and make payments to eligible producers in July.

Ms. HERSETH SANDLIN. And the eligibility will include those who may have experienced losses this past spring and winter?

Mr. MILLER. The eligibility will include those who have experienced death losses under the program, yes, over the 2008 and 2009 years. They will of course need to bring in information to validate those claims, but again we are certainly pleased that we were able to get this program in the position where we can start providing assistance as quickly as possible.

Ms. HERSETH SANDLIN. We appreciate that update, and as we have been waiting to determine when the rules would be finalized, we have encouraged producers to fully document those losses. Just so you know, we have farmers and ranchers where losses are at, what we estimate $25 million, and the general estimate for livestock losses ranges as high as 15 to 20 percent in some areas. So heavy losses, just to put that on your radar in terms of what happened in western South Dakota this spring.

Could you also provide similar updates for the Livestock Forage Program and the Emergency Livestock Assistance Program?

Mr. MILLER. Those two programs are currently in the USDA review process. While we initially separated them to begin developing the regulations, we now are combining them back together to finalize the review. We think we are in reasonably good shape within USDA in terms of completing that review in the not-too-distant future. At that point once we have finalized our activities, then that will also need to go to OMB for its review and we are extremely hopeful that we can get that program in position to be implemented later this summer.

Ms. HERSETH SANDLIN. Okay. We appreciate your efforts there to move as quickly as possible in light of coming onboard this spring.

Just to follow up, and I apologize, I was in and out so maybe this question was more specifically asked; but I know that Mr. Boswell, Chairman Boswell and the Ranking Member asked some questions about ACRE. Were you asked, do you have a specific reaction or opinion on the National Corn Growers Association proposal that they set forth yesterday in their testimony about modifying sign-up procedures? And we certainly appreciate extending the deadline for the sign-up, but the whole issue of allowing producers and landowners interested in ACRE to file an intention to elect to enroll in

ACRE. Would you support either that type of modification, or are you discussing any other types of modifications to the procedures to deal with some of the concerns about the complexity? And while the calculator appears to be working well, it does require some training and sophistication to use it appropriately.

Mr. MILLER. Well, we certainly appreciate the complexity of the program and the need to provide producers adequate opportunity to fully weigh their options whether they wish to participate in the traditional direct and countercyclical programs or decide to enter into an ACRE contract. I think it is a bit premature to be talking about further extension of the sign-up date, but certainly as we get closer to that August 14th date, if we at that point determine that producers still have not had an adequate amount of time, that is something that we would need to consider. I should mention, however, that an extension, further extension of sign-up for ACRE will probably result in an additional cost to the Department. So, obviously balancing our budget concerns with being able to ensure producers have adequate opportunity to sign up for the program is difficult in this environment. I do believe that the ACRE education program that FSA is currently engaged in will be of great benefit to producers both in terms of helping them understand the intricacies of the program because it is complex, and also I believe it will help to at least promote the idea that producers should take a good hard look at the ACRE program. For some it will be a very appropriate risk management tool and potentially provide them greater levels of economic security than the traditional program. That will not be the case for all producers certainly.

Ms. HERSETH SANDLIN. I appreciate your responses and that you will monitor it as we get closer to August 14, and I want to share your optimism that over the course of the upcoming weeks that that type of information sharing will answer a lot of the questions that remain for a number of producers, as it relates to participation. It is an irrevocable decision, as you mentioned, over the course of this farm bill in the upcoming weeks. I am out of time and I need to head down the hall to the Natural Resources Committee that is also having a hearing, but I am going to submit a question to you in writing with regard to CRP and to the State Acres for Wildlife Enhancement Program and some South Dakota-specific issues that we are dealing with there. I look forward to discussing those issues with you at greater length. Thank you.

Mr. MILLER. I look forward to your questions and we will respond to them as quickly as we possibly can.

Ms. HERSETH SANDLIN. Thank you.

Mr. MILLER. Thank you.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman.

The CHAIRMAN Thank you.

The chair now recognizes the gentlelady from Colorado, Ms. Markey.

Ms. MARKEY. Thank you, Mr. Chairman. Thank you, Mr. Miller.

I wanted to talk a little bit about the crop insurance program. You mentioned in your testimony that right now you are evaluating the skip-row cropping practices for corn and sorghum. I know that is important for several producers in my area, as well, and they have been trying to work with RMA to be compensated for

that. I mean, it is a practice where in Colorado every drop of water counts. So if you could talk a little bit about where you are on that study.

And then the second part of it, you also mentioned that RMA recently contracted for a study of pricing and rating for organic production practices. I am interested in that and also on any studies you are looking at for providing RMA services of compensation for fresh fruits and vegetables as well. So if you can talk about those two issues?

Mr. MILLER. Concerning skip row, we are evaluating a number of proposals, and no determination has been made concerning that but it is in the process. We will give it a very serious look.

In terms of the expansion of crop insurance, particularly as it relates to specialty crops, as I think everyone in this room is aware, we have seen a substantial increase in the use of the various crop insurance risk management tools that have been made available. RMA, in cooperation with the private insurance companies and others such as farm organizations and program developers, have made significant strides in terms of program expansion. Not only have the number of acres and the amount of liability that is covered by the crop insurance program increased dramatically in recent years, but the breadth of those programs in terms of covering new crops has also expanded significantly. However, as we look at expansion particularly to crops in which there is not a significantly large acreage or a market that is transparent, it becomes increasingly more difficult to design programs that are actuarially sound. And so that is certainly an issue that RMA takes very seriously, but, again, we have been very aggressive in terms of trying to review new proposals. We have submitted any number of proposals to expert review panels; and certainly as opportunities come to provide new risk management tools to our producers that can be a benefit to them, and that are actuarially sound, that we can price appropriately. We will be prepared to make those offerings either as pilot programs initially with the goal of, hopefully, making those types of programs available nationally.

On the organic issue, we do expect the price election report to be available in July, so we are making headway in that regard.

Ms. MARKEY. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN My Ranking Member and I, we had a very important discussion while you were asked your questions. Did you mention in that, did you ask was there a place for the producers to participate in this?

Ms. MARKEY. You know, I didn't. That is a good point. If there is a role for the producers to participate——

The CHAIRMAN Well, in a recent hearing they indicated interest in it, Mr. Secretary, and I just wondered if you raised that question because I got sidetracked a little bit. Is there a role for farmers in helping the USDA to prepare for negotiations as we think about the re-insurance and so on?

Mr. MILLER. Yes, there is. The negotiations technically are between the Risk Management Agency and the private insurance companies. This is in a way a contractual negotiation. So in terms of official representation at the negotiating sessions, it is between those two parties. However, we do have an open-door policy——

The CHAIRMAN So you would listen to what they—okay.

Mr. MILLER. We have invited them. They have been in my office. I know they have spent significant time at RMA's office, and not just the producers but agents and literally anyone else that has significant interest in the crop insurance program. We welcome their comments and their input as we enter into these negotiations.

The CHAIRMAN I appreciate that.

Ms. MARKEY. Let me just follow up. I do have several producers in southeast Colorado who have been working pretty closely with RMA about skip-row practices because they are the ones who are doing it. You know, they have the data, so I think that they have a pretty good working relationship with RMA and that is important because they are obviously the ones on the ground.

Mr. MILLER. I completely agree with you, and certainly the growers will have every opportunity to provide their input to provide data that can help us develop a program that can meet their needs.

Ms. MARKEY. Thank you.

The CHAIRMAN Thank you, Ms. Markey. That was an excellent discussion. That is part of our responsibility. As you know, Mr. Secretary, this Committee has oversight and so on and we haven't forgotten about that. We have just been busy as you have, and that will be coming along at some point in time. We are going to have a second round if we can and I would like to, since I got involved in both Mr. Kissell's and Ms. Markey's discussion, I will yield immediately to my Ranking Member.

Mr. MORAN. Mr. Chairman, thank you. I appreciate the opportunity to continue our discussion with the Secretary. I have an additional question but mostly this is follow-up. First of all, in regard to the SURE issues that I raised in regard to failed wheat acres, double cropping, I don't think you responded to my assertion that USDA has to overcome a statutory prohibition against issuing NAP policies when the underlying commodity is eligible for crop insurance. Is my assertion just wrong? I think we have made the argument to USDA that you do not have the authority to issue those NAP policies to begin with.

Mr. MILLER. If a crop insurance policy is available on a crop, we certainly should not be engaged in issuing NAP coverage. So if CAT or any other type of buy-up policy is available, then a producer would not be eligible to purchase NAP coverage.

Mr. MORAN. And USDA is abiding by that?

Mr. MILLER. We believe we are.

Mr. MORAN. And second, in regard to that same topic, you talked about the opportunities for equitable relief. What is the time frame—I don't think we have a state committee in place or a state director. What is the time frame in which those appointments will be made and equitable relief becomes a real opportunity?

Mr. MILLER. Well, that is an excellent question and——

Mr. MORAN. And I would be glad to have you direct it specifically to Kansas.

Mr. MILLER. It is an excellent question, and one that has been posed by a number of people that have come through my office recently, and quite frankly one that I pose almost every day at the Department. Let me answer it this way. We are very close to announcing a significant number, not all, but a significant number of

the state executive directors for FSA as well as state rural development directors. And when I say very close, I am hopeful that within a matter of days rather than within a matter of weeks. There are others in which the vetting process has not been completed yet so that may be delayed. I can't tell you specifically where we are in terms of Kansas at this moment, Congressman.

Mr. MORAN. I was going to follow up with that, but Mr. Boswell wanted me to ask about Iowa.

Mr. MILLER. But I can assure you, we certainly recognize the importance of getting these people in place. Once they are in place, I am hopeful that we will be able to move expeditiously in naming the state committees because obviously they have a very significant role to play in our delivery of these programs.

Mr. MORAN. I talked to you about the sorghum price election and I want to read the statute, the language from the farm bill, the section 12009 that I mentioned. "The Corporation, in conjunction with the Secretary . . . shall not later than 60 days after the enactment of this paragraph, make available all methods and data, including data from the Economic Research Service used by the Corporation to develop the expected market prices for grain sorghum under the production and revenue-based plans of insurance of the Corporation." That is the language of the statute. On June 5th, this Subcommittee, or actually Mr. Boswell and I, the Ranking Member of the full Committee, Mr. Lucas, and the full Committee Chairman, Mr. Peterson, and other Members of the Committee wrote the Secretary of Agriculture reminding him that 60 days after the enactment has come and gone and still no response for the release of that data, and you indicated that you are working through the models. It is not the model or the conclusion that the statute requires that be released, it is the method and the information which is being fed into the model that the grain sorghum producers are entitled to, and the reason this is important is that without that information the expert reviewers who are tasked with developing and recommending methodology to better determine that price selection, that market price for grain sorghum, can effectuate their statutory obligation. So I am again asking that USDA release that information.

Mr. MILLER. Well, Congressman, first of all let me say that I cannot speak for the Economic Research Service. That is an agency that is not within my mission area. Having said that, it is my understanding that they are considering releasing the information that has been requested, and I will be happy to convey your comments both to ERS and once again to the Secretary and see if we can get this issue resolved.

Mr. MORAN. You are very good in answering that question. I have no greater guarantee that the information is going to be provided but it was a nice answer.

And finally, I have just a few seconds left. Sign-up for the extensions on CRP expire, as I understand it, at the end of the month.

Mr. MILLER. That is correct.

Mr. MORAN. If there are less than 1.5 million acres that are requested for extension, is there a plan to have—maybe you can tell me how many acres have been requested for extension. That may

answer the remaining part of my question about this topic. Is there a plan for additional sign-up if it is less than the 1.5?

Mr. MILLER. There is a pool of about 1.5 million acres that would be available for reenrollment under the Secretary's announcement, so we certainly—I think reasonably—would not expect that every one of those acres would necessarily be enrolled.

Mr. MORAN. Do you expect more applications than available acres?

Mr. MILLER. We expect that the reenrollment contracts will be smaller than the total pool of acres that are available because we have defined—the 1.5 million acres that are available for reentry are those acres in expiring contracts that meet the conditions that we have established in the reenrollment program. They are the most highly erodable acres contained in those expiring contracts. So the number of acres that will be enrolled naturally could not exceed that 1.5 million acres, and quite likely will be somewhat less. At this point we do not know how many acres will be enrolled. In some ways I believe the late spring, and quite frankly, our announcement was not made available until the latter part of May in terms of the reenrollment opportunity, so I expect that there are a number of producers out there that have eligible acres that are still weighing that decision. We will need to wait until we get closer to the end of the sign-up period to have a better handle on the number of acres. I would say that at this point there are certainly no plans for a general CRP sign-up for 2009, but certainly farmers can engage in the continuous sign-up program at any time during the year and that includes acres that are available under expiring contracts but not eligible to reenroll.

Mr. MORAN. Have you established a date for a general sign-up?

Mr. MILLER. We have not established a date for a general sign-up.

Mr. MORAN. Do you know if one will occur in 2010?

Mr. MILLER. That is something that we will certainly consider because as we recognize that once again we will have a number of contracts that will be expiring in 2010, and that is a decision that we will be considering later in the year.

Mr. MORAN. Does a general sign-up require a NEPA analysis?

Mr. MILLER. I believe after we implement the CRP regulations for which the new CRP regulations that were contained in the 2008 Farm Bill and those regulations do require an environmental impact statement. I believe once we have concluded that, then we would be able to go ahead and sign up new acres in CRP.

Mr. MORAN. Thank you very much. In an attempt to be gentlemanly and somewhat clever, I do want you to know I was not intending to let you off the book on answering the sorghum question. While I want to be friendly about it, I still intend to be insistent as I can be that USDA and the Corporation comply with the directive of farm bill.

Mr. MILLER. I wouldn't expect anything less, Congressman.

Mr. MORAN. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN You are very welcome, and I will just say, Mr. Secretary, I have known this man. We came here together and he is not going to let up.

That was a good dialogue, and I appreciate that. This has been excellent. We have been joined by the gentleman from Indiana, Mr. Ellsworth. We recognize him at this time.

Mr. ELLSWORTH. Thank you, Mr. Chairman, and I apologize. They double booked me for hearings today, and, Mr. Miller, I apologize. If you have answered this already, I hope you won't mind answering it again. I noticed on page six of your testimony you talked about the farm flex, the Planting Transferability Pilot Project, that only 11,000 acres had been applied for when I believe that 76,000 are available. I wouldn't guess you have that at your fingertips what states and the areas the 11,000 acres have been applied for, but if I can get that from you or someone on your staff. And do you have any anticipation why that has occurred, if there are 76,000 available, why only 11,000 were taken advantage of?

Mr. MILLER. Well, Congressman, this is a program that was greatly expanded in the 2008 Farm Bill to cover a much larger range of crops. The data that I have for 2009 indicates that Indiana had 9,000 acres potentially available for the planting flexibility program and of that 9,000 acres, producers have signed up for 2,610 acres. You are correct that we have just over 11,000 acres signed up in the program, but again this is a producer choice. It really reflects the decisions that they make concerning how they view their economic prospects from raising a traditional program crop on those acres *versus* their potential economic gains from raising one of the eligible specialty crops for processing. So that acreage is committed for this year. Producers will have another opportunity to weigh that program next year.

Mr. ELLSWORTH. Do you figure it might have been that it was just brand new, fresh with the new farm bill and then this year there might be more taking advantage of it, or any gut feeling for that?

Mr. MILLER. Well, my gut feeling is that both producers as well as the processing industry for those eligible commodities will probably be evaluating their needs as we look forward to 2010, and so certainly the amount of acreage could change both in terms of the aggregate amount of acres that are signed up. Certainly, the amount of acres that may be signed up in any one state vary, because there are some differences between the states in terms of the eligible commodities that are produced.

Mr. ELLSWORTH. Okay. Thank you very much. That is all I have.

Mr. MILLER. Thank you, Congressman.

Mr. ELLSWORTH. Mr. Chairman, I yield back.

The CHAIRMAN Well, thank you. That was a good discussion and it was on my list, so you took care of that.

Mr. Kissell.

Mr. KISSELL. Thank you, Mr. Chairman, and Mr. Miller, this is more of a request and it comes at the very edge of the oversight of this Committee and your mission area, but it follows up a little bit with what we talked about earlier with the computer programs. When Secretary Vilsack was here a couple weeks ago, we spent some time talking about rural broadband and pending release of monies towards that. We also talked about some definitions that we would be very interested in, what would define rural, what would define underserved to get an idea as to what areas this rural

broadband would be going. It was mentioned to me yesterday in a completely different conversation with other people that that is still pending, and I believe the dates are coming up. If you could pass along that to my knowledge that we have not gotten those definitions back and certainly this is important to our rural areas and it would be important towards the upgrade of the computer programs we talked about. So if you have any insights on that, I certainly would be appreciative, but if not, if you could certainly pass on to the people that to my knowledge we are still waiting on those definitions.

Mr. MILLER. Mr. Kissell, I will be more than happy to convey that message to the Secretary's office as well as to the Under Secretary for Rural Development where the focus of that program lies, so we will make sure that your message is conveyed to them.

The CHAIRMAN Thank you. Mr. Pomeroy.

Mr. POMEROY. Thank you for holding this hearing, Mr. Chairman. I want to talk about how proud I am that Mr. Jim Miller is Under Secretary of Agriculture for Farm and Foreign Agriculture Services. The first time I got to know Mr. Miller, he was a wheat farmer in eastern Washington, and since that time I have seen him working in various iterations, most notably including the National Farmers Union Policy Director and Senator Kent Conrad's ag expert. I watched him as the principals met and worked out the final provisions of the farm bill. Jim Miller's counsel to Senator Conrad is directly responsible for many of the very provisions of the farm bill he is now charged with implementing so this is all to the good. You know, we pass stuff, it goes down to USDA. Sometimes it comes out in forms not to be recognized. Here we have a guy that actually was involved on one end of Pennsylvania Avenue and right now down at the other end implementing it, Independence Avenue, I guess I should say, and we are very, very pleased to have him there.

Mr. MILLER. Thank you, Mr. Pomeroy.

Mr. POMEROY. A couple of questions, Jim, Mr. Secretary: With regard to the disaster programs, SURE and livestock programs, when are we going to look at sign-up?

Mr. MILLER. Mr. Pomeroy, as I announced earlier——

Mr. POMEROY. I apologize.

Mr. MILLER.—yesterday the Office of Management and Budget cleared our regulations for the Livestock Indemnity Program so we will be publishing that program over the next few days and we expect to be able to begin sign-up and make payments in July.

Mr. POMEROY. Do you have the requisite staff to handle that?

Mr. MILLER. We believe we do. Obviously the implementation of all of these programs, and there are a number of them, are going to create a burden on our county offices in particular. They are the people that are on the front lines. But I can tell you my experience, both as a farmer for over 20 years and then since I have been in Washington, I don't think that there is a group of people in the country that are more dedicated to the success of agriculture than the folks that man our county FSA offices. So I am confident that they will do everything possible to be able to implement this program and get the assistance to farmers in as expeditious a manner as possible.

Mr. POMEROY. I agree with that assessment of your field staff. They are tremendous. In your very first day as Under Secretary in the State of North Dakota we are looking at the horrible disaster losses we were racking up during the spring floodings and following the record snowfalls that we have had, we lost a lot of calves. How will the valuation of calves take place under this Livestock Indemnity Program?

Mr. MILLER. We have—in the regulation, we will have established a fixed value for the various types of livestock that are eligible. I think once you see the rule as it is published, we believe that we are treating those producers very fairly in terms of a recognition of the value of a newborn calf and many of the losses in the northern plains occurred right in the midst of calving season. So we believe we have provided a fair payment rate for those eligible producers and we certainly look forward to getting the benefits to them as quickly as we can. We certainly understand the problems that they are facing.

Mr. POMEROY. A day-old calf has one level of value, a cow/calf pair has a different dimension of value, reflecting more the economic opportunity of that asset to the farmer.

Mr. MILLER. And that is exactly some of the issues that weighed in our consideration of what value to put on them, that we certainly know that a calf is not produced to go to market immediately, that a producer does expect to gain some economic value. So, again, we have found a way to provide a valuation for those livestock that is going to be fair and equitable to the producer.

Mr. POMEROY. Thank you, Mr. Secretary, and we look forward to more information as it comes out of the sign-up. It is very good news from OMB yesterday.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN Glad you were able to join us, and I think that concludes our round of questions. Before we close, though, I am going to recognize the distinguished gentleman from Kansas.

Mr. MORAN. Mr. Chairman, thank you very much for conducting this hearing. Mr. Miller, Mr. Boswell and I would like to be very complimentary of your debut performance. I wanted to give you the opportunity maybe to introduce those members of your team who are with you that we will be working with and dealing with, who I assume are seated behind you.

Mr. MILLER. Can I give you their home phone numbers as well?

Mr. MORAN. I have my pen and paper in hand.

Mr. MILLER. Well, let me make just a couple of introductions because we are dealing with farm programs, and so I would like to introduce the Deputy Administrator for Farm Programs, Jonathan Coppess. Jonathan, raise your hand. Jonathan came to USDA from Senator Ben Nelson's office where he was his Legislative Assistant for Agriculture. He spent a great deal of time working on the 2008 Farm Bill, so he has an in-depth knowledge of how those negotiations proceeded as well. Also, Bill Murphy, who is the acting Administrator of the Risk Management Agency has joined us today, and again, that is an issue that is front and center with this Subcommittee. The Risk Management Agency is going to be deeply engaged in the negotiations of the new standard re-insurance agreement, and so I certainly would direct all your calls, cards and let-

ters to Bill. But two people that I do want you to become acquainted with who are very important in the operation of the Farm and Foreign Agricultural Service, my office, first my Deputy Secretary who is working on the domestic issues, Michael Scuse, over here, a former Commissioner of Agriculture from Delaware, and again, a real-life farmer. He and his brother have a grain farm in the State of Delaware, and Michael brings a wealth of pragmatic farm experience to this operation, something that I certainly appreciate. And also I would like to introduce my Confidential Assistant, Brandon Willis. Brandon is a former Legislative Assistant for Agriculture for Senator Max Baucus, again involved in the 2008 Farm Bill, both from the agricultural policy standpoint but also involved in working on the funding package that provided us the opportunity to make some changes in the farm bill. So he again brings a wealth of knowledge to our operation. And finally, Carolyn Cooksie, who is the Deputy Administrator for Loan Programs in FSA, who is a very valuable asset to FSA, not just because of the important position that she holds there in terms of these loan programs, which has taken on new and greater significance this year, given the challenges facing production agriculture, but Carolyn has served during this transition in a number of acting positions. I can say with all honesty that had it not been for Carolyn, I am sure I would have lasted more than a day at USDA. So I certainly want you to feel free to contact any of these folks who work in the FFAS mission area.

Mr. MORAN. I thank you, Mr. Secretary. Again, I wish you and your team of great expertise well. I look forward to working with you. I would again smile when I say that once again you have indicated—your performance is excellent. You have indicated a willingness to provide home phone numbers but didn't do so, and I appreciate a good performance.

Thank you, Mr. Chairman.

The CHAIRMAN Well, thank you, Mr. Moran. We had a little discussion earlier, as you went through your testimony and a couple things I would like to particularly appreciate, not only the expertise but the hands-on that Mr. Pomeroy made comment about. There are a few of us around here that still know how to set a drill or a planter, or set the concaves or the wind on a combine, and so on, and we think that is very, very important and not too many on this side have been there and done that, and not too many on your side have been there and done that, and we appreciate that. So we anticipate really working hard together, and when we disagree we will do it in a friendly way and then just get on and get the things done we can get done. And so I am very appreciative. And to add a little bit levity, going back a few years when I was a primary flight instructor in my military days, you had to give a grade slip at the end of the flight. We are going to give you a AA today but don't anticipate we will always have that. That is a big difference between a pink slip, you know.

Mr. MILLER. Thank you, Mr. Chairman.

The CHAIRMAN So we appreciate very much your open dialogue, and that was good. I feel the same way, open door. Our door is open. I know Mr. Moran's door is open and yours is, so let us do our best and that is what you are here, and that is what we are

here for, and I am looking forward to us progressing. I appreciate that you have your team with today. That is good. Thank you, Jerry, for getting them introduced.

With that, we will move to adjourn. Under the rules of the Committee, the record for today's hearing will remain open for 10 calendar days to receive additional material and supplemental written responses from the witnesses to any question posed by a Member.

The hearing for the Subcommittee on General Farm Commodities and Risk Management is adjourned.

[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]

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