

You requested that I summarize for you the reasons for my objecting to the currently debated 5% (vs. 10%) verification proposal for USDA/NRCS cost shared practices.

The starting point for my objection is the Science Panel's guidance, which Dana has repeatedly quoted, setting forth the overarching concept for any state's verification program: "Aim high, explain why." (See the Panel's Nov. 19 Guidance: "Aim High or Explain Why. The Panel asks jurisdictions to adopt the "robust" levels of verification described in the respective workgroups' guidance or explain in their quality assurance plan why they cannot, recognizing the legal as well as funding issues that may impede high levels of verification.") Using a 5% level of inspection is hardly an "aim high" proposal.

Moreover, as reflected in the Science Panel document, as well as throughout the verification principles and processes, it is the state's role and responsibility to present a verification protocol which it believes is sufficiently "robust." It is not an argument for USDA/NRCS to make, nor for an NGO to make, nor for any other source upon which the state is relying as part of its verification program. If the state chooses to rely on a 5% inspection rate from USDA/NRCS, let it present to the Panel and to EPA its justification for why this is sufficient. Let it "explain why." For example, if the state presented evidence that there was statistical rigor with the USDA/NRCS 5% inspection program, then the state could potentially establish that it was sufficiently robust and it need not do a 10% minimum. While one state representative recently argued against this concept, alleging potential future EPA overreaching, other state representatives have embraced its legitimacy.

And with some states already doing, we are told, in general, 10% inspection levels for ag BMPs, to reach for the lowest common denominator of 5% makes no sense. (During our Ag Work Group verification revamp discussions, folks who have worked on-the-ground advised that a 10% spot check was or is the norm for verification in some states or districts; it is my understanding that this used to be the norm for USDA/NRCS, also.)

Add to this the fact that the basis for the USDA/NRCS 5% inspection was not an inspection scheme for water quality protection, pollution reduction performance, or natural resource improvement, but for financial audit purposes. The OMB report being used to justify the 5% review was a report looking at whether USDA was properly spending its money, not at whether it was achieving pollution reductions. It is my understanding that the practices included in the 5% that USDA/NRCS established for the OMB study were not the result of a random sample at all. The selected 5% were based on factors such as level of investment and difficulty of installation, for example. The current USDA/NRCS 5% selection process may well be consistent with this. My point: the USDA/NRCS 5% inspection process as established was irrelevant to the water quality focus of the verification process in which the CBP is engaged.

Finally, the 5% proposal does not pass the blush test for a new and improved verification system. In fact, it undercuts the very nature of the verification initiative which the CBP is conducting. To share with the public that the CBP believes, under its new and improved verification program, that an aggressive and state-of-the-art system for verifying that an agricultural practice is there and functioning is to examine randomly only 5 practices out of every 100, or 50 practices out of every 1000, leaving unexamined 95 or 950 practices, respectively, is ludicrous.

There is a possible solution to this debate which was suggested to me: EPA could hire an independent third party to evaluate the current USDA/NRCS process as it is applied in each

state; the evaluator could make a determination if the 5% inspection for that state passes the necessary scientific rigor of the new CBP verification program as established by the BMP Committee and Review Panel.

I hope this helps your understanding of my concerns.

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