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2008 Farm Act, EQIP, Interim Final Rule Comments

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March 16, 2009

Mr. Thomas Christensen
Deputy Chief for Programs
U.S. Department of Agriculture
Natural Resources Conservation Service
Room 5237
P.O. Box 2890
Washington, D.C. 20013-2890

Dear Mr. Christensen:

The USA Rice Federation submits the following comments regarding the 2008 Farm, Conservation, and Energy Act's (the Farm Bill) Environmental Quality Incentives Program (EQIP). USA Rice provides the comments in response to the U.S. Department of Agriculture's (USDA) interim final rule solicitation, **Docket Number NRCS-IFR-08005**, Federal Register, January 15, 2009, Vol. 74, No. 10, 7 CFR Part 1446, RIN 0578-AA45, pp. 2293-2317. The Natural Resources Conservation Service (NRCS) administers EQIP for USDA.

Rice producers are excellent conservation stewards. USA Rice strongly supports voluntary, incentive-based conservation programs. A number of USA Rice members participate in EQIP -- and other national-level programs -- under previously-authorized farm bill conservation programs. Through program participation, they contribute to their family farms', communities', states', and the nation's environmental stewardship benefits. USA Rice also supports administration of EQIP and other conservation programs primarily at the local level through each state's agency of preference. We urge an open dialogue between NRCS officials at all levels and EQIP participants. NRCS will operate a more effective program if its officials listen closely and respond in a timely manner to issues, concerns, and suggestions raised by participants.

USA Rice strongly urges USDA to maximize EQIP participation through a clear, streamlined, transparent application and decision-making process, and one that is fair, reasonable, and practical. The EQIP process must minimize the amount of time that applicants spend in NRCS offices to inquire and learn about the program, apply for funding and other assistance, and, if declined, learn why the application is rejected. In addition, USDA must keep current and communicate effectively in a timely manner not only its application process and program requirements, but also its technical standards and indexes for setting and measuring stewardship benefits, including through use of the Conservation Effects Assessment Process, and its cost-sharing payment rate and related guidelines.

USDA is urged to implement EQIP true to the statement the agency made in the IFR, which says, in part, NRCS will assist in a manner that will promote agricultural production and environmental quality as compatible goals. The NRCS IFR statement parallels the 2008 Farm Bill's Joint Explanatory Statement of the Committee of Conference, which says that the bill's Managers "expect the Secretary to continue to help producers address conservation needs on their land while promoting agricultural production and environmental quality as compatible goals."

Comments on specific issues follow

Subpart A – General Provisions

Sec. 1466.2, Administration – Sec. 1466.2(d) When entering into agreements with other federal or state agencies, local governments, non-governmental organizations, or individuals to assist with program implementation, it is essential, overall, that NRCS impart clearly and emphatically that EQIP's statutory authority and Congressional intent must prevail and be adhered to when implementing the agreements.

1466.3 -- Definitions

Agricultural Operation – Revising the definition of agricultural operation -- to make it consistent with other conservation programs -- is of serious concern. The phrase, "and that is operated by the producer with equipment, labor, management, and production... practices that are substantially separate from other operations" should be eliminated. As written, the phrase would create major problems in its administration because of the different and inconsistent interpretations that NRCS offices potentially could use to determine what is meant by separation of equipment, labor, management, and production practices from other operations and, within that clause, interpretation of what the word, significantly, and the word, operations, mean. If this is NRCS's intent, it is neither fair, realistic, nor practical for producers to have or be expected to have separate sets of equipment, labor, management, and production that are substantially separate from other operations in order to be eligible for and participate in conservation stewardship programs, including EQIP. If NRCS' intent is otherwise, the definition needs to be rewritten to clarify its meaning and purpose.

At-risk species – In response to the NRCS' IFR request for comment about the current definition of at-risk species, the following is provided: (a) We support continuing the roles of State Conservationists to make at-risk determinations and the State Technical Committees to advise State Conservationists about the determinations; and (b) With regard to making at-risk species determinations, the current definition should be modified to contain the following components as part of a new tailored definition: that the State Conservationist's determination and the State Technical Committee's advice are based on sound, scientifically-based evidence and analysis that document the need for direct intervention to halt a species' population decline.

National Measures and *National Priorities* -- Each of these two terms should be redefined to have each definition include the following components: the measurable criteria identified by the Chief for national measures and the resource issues identified by the Chief for national priorities, notwithstanding the advice of other federal agencies and State Conservationists, must mean clearly and emphatically that EQIP's statutory authority and Congressional intent must prevail when the Chief defines and implements national measures and priorities.

Priority Resource Concern -- Identification of a Priority Resource Concern (PRC) must be defined to include the following components: that the State Conservationist's identification of PRC's, in consultation with the State Technical Committee, clearly and emphatically conforms with EQIP's statutory authority and complies with Congressional intent and that PRC's are selected in an equitable, balanced, scientifically-based and documented process throughout the state's geographic areas and watersheds.

Resource Concern – The definition of the term, Resource Concern, raises concern because of the potential for different and inconsistent NRCS office interpretations of the words, significant, likely, and successfully. Each of these words is general in meaning, potentially allowing for a range of different,

inconsistent interpretations. It is recommended that USDA redefine and clarify in specific, measurable terms what the words, significant, likely, and successfully, mean when used in the definition of Resource Concern for EQIP purposes. Specificity and clarity will avoid confusion, uncertainty, and inconsistency.

1466.4 – National Priorities

It is reasonable for NRCS to take periodic reviews of the national priorities and program delivery effects at the state and local level to provide adaptability for emerging resource issues, guide the allocation of EQIP funds to the state offices, help to prioritize and select EQIP applications, and periodically review and update the national priorities using public and stakeholder input. Essential to the fairness of the process is that it must be clearly defined and transparent, available and accessible at the national, state and local levels, and clearly and timely communicated in terms of purposes, objectives, justification, and outcomes. Outcomes in terms of state-funding allocations, EQIP-application prioritization and selection, and national-priority updating must also be balanced and equitable.

1466.5 – National Allocation and Management

Overall, conformity with the 2008 Farm Bill's statutory language for EQIP and compliance with Congressional intent for the program must be integral to all aspects of the national allocation and management rules' implementation.

1466.6 – State Allocation and Management

Overall, conformity with the 2008 Farm Bill's statutory language for EQIP and compliance with Congressional intent for the program must be integral to all aspects of the state allocation and management processes' implementation.

1466.7 – Outreach Activities

Establishing national program outreach, including at the state and local levels, is applauded and a regularly-scheduled, easily-accessible, clearly-communicated and responsive process is recommended.

Subpart B – Contracts and Payments

1466.10, Conservation Practices – Sec. 1466.10(c) Rice production is irrigation-based and dependent. Rice producers are excellent conservation stewards, including through their water management practices, which benefit their operations, the environment, and wildlife. This IFR item needs to be rewritten and clarified. As written in the January 15 IFR, on page 2313, it is not clear about its purpose or meaning in terms of some of the language used, namely that a "participant will be eligible for payments for water conservation and irrigation related conservation practices only on land that has been irrigated for two of the last five years prior to application for assistance." For purposes of this IFR item, what does the following phrase mean: "...only on land that has been irrigated for two of the last five years prior to application for assistance." If the IFR means land that has been irrigated for no more than two years, then implementation following that directive potentially could limit rice producers' participation in EQIP for water and irrigation-related practices. If the IFR's purpose and meaning are otherwise, then the item needs to be rewritten to clarify its meaning and purpose. In general, for EQIP purposes, rice producers' applications for water conservation or irrigated-related conservation practices must allow for established water-related production practices that are necessary for rice production. In addition, if a rice producer were to expand the farming operation, then that action potentially could require increased water use in

order to cultivate the new acres added to the farm. Rice producers must not be denied EQIP payment eligibility for established and required production practices. If this were to happen, additional beneficial conservation stewardship benefits generated by rice production through EQIP participation would be lost.

1466.20, Applications for Contracts and Selecting Applications -- 1466.20(b)(6) The IFR statement that the State Conservationist will make available publicly all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in the state is commended for its expressly-stated mandate that these steps will be taken. Clear, accessible public communication makes a state's EQIP program transparent and understood, encouraging participation, generating confidence, and building the foundation for expanded conservation stewardship benefits.

1466.23, Payment Rates – 1466.23(a)(6) USDA should define for improved communication, public awareness, and program transparency a listing of specific types of other pertinent local considerations that are to be used when determining a state's EQIP payment rate.

Subpart C – General Administration

1466.32, Access to Operating Unit – USDA must inform and make clearly available notices in its national, state, and local offices, during public outreach activities, and during meetings with prospective applicants and active participants that its authorized representatives have certain limited rights to enter an agricultural operation solely for EQIP-related purposes. Those rights and their limitations must be clear and explicit to NRCS representatives and the public. The IFR statement that the NRCS representative must make every effort to contact the participant prior to entry of private property must be honored and fulfilled to the fullest extent, with every effort to make prior contact documented and logged, using permissible and appropriate means of communication.

CONCLUSION

USA Rice is pleased to know that USDA believes that the 2008 Farm Bill's EQIP is expected to have a substantial effect on the environment that results from the statute's funding increase, e.g., by helping to increase water use efficiency, reduce wind erosion, and improve fertilizer management and wildlife habitat. With the increased funding and eligible program practices that Congress has authorized for EQIP, USA Rice hopes that the program's implementation will fulfill its unchanged fundamental purpose: to help participants practice and provide effective conservation in their operations. Fulfilling that mission will yield the local, state, and national stewardship benefits that Congress intended for EQIP.

Thank you for the opportunity to comment and for consideration of those submitted herein.

Sincerely,

Thomas C. Hoskyn

Tommy Hoskyn
Chairman
USA Rice Producers' Group

Leo LaGrande

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Chairman
USA Rice Producers' Group
Conservation Committee

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