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FAX TRANSMITTAL

KANSAS DEPARTMENT OF
WILDLIFE & PARKS
FISHERIES & WILDLIFE DIVISION
512 SE 25TH AVE
PRATT, KS 67124

(620)672-0797

FAX (620)672-0821

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TO: Greg Johnson
Director, Financial Assistance Programs Division
US Department of Agriculture,
Natural Resources Conservation Service, Room 5237
Washington, DC 20013-2890

FAX NUMBER: 202-720-4265

FROM: Keith Sexson
Assistant Secretary of Operations
Kansas department of Wildlife and Parks

COMMENTS:

Federal Register Docket Number **RIN 0578-AA45**, Interim Final Rule affecting changes to the Environmental Quality Incentive Program.

Tonya Hoeme
620-672-0797
tonyah@wp.state.ks.us

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KANSAS

DEPARTMENT OF WILDLIFE AND PARKS

KATHLEEN SEBELIUS, GOVERNOR

April 17, 2009

Gregory Johnson
Financial Assistance Programs Division
USDA - Natural Resources Conservation Service
Environmental Quality Incentives Program Comments
1400 Independence Avenue, SW
Room 5237-S
Washington, DC 20250-2890

RE: Federal Register Docket Number **RIN 0578-AA45**, Interim Final Rule affecting changes to the Environmental Quality Incentives Program

Dear Mr. Johnson:

The Kansas Department of Wildlife and Parks (KDWP) appreciates the opportunity to comment on the interim final rule affecting implementation of the Environmental Quality Incentives Program (EQIP) as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)

As EQIP is revised in accordance with the 2008 Farm Bill, it is important that fish and wildlife resources be given adequate priority and attention. The agricultural landscapes of the Nation are home to many species of fish and wildlife that must survive there if they are to survive at all. Fish and wildlife conservation can be compatible with production of food and fiber on agricultural landscapes but it takes forethought and planning, particularly to address at-risk species that already suffer from diminished habitat. Fish and wildlife conservation should not be left to chance as EQIP is implemented on agricultural landscapes – when that happens, society often has to pay separately and additionally in order to achieve fish and wildlife conservation.

In addition, NRCS is to be applauded for elevating attention to forest land in EQIP. Forests provide important agricultural products such as lumber for many uses and will be an increasingly important source of cellulosic material for biofuel production. Forests also help conserve soil, contribute to water quality, sequester carbon and provide essential habitat for many species of terrestrial wildlife as well as contribute to quality and quantity water for aquatic species.

NRCS is commended for continuing to allow the use of ranking pools to focus on key conservation issues. This allows the State Conservationist with advice from the State Technical Committee to establish strategic geographical habitat initiatives to address fish and wildlife concerns. In prior years this has been an effective tool to further the conservation of species in greatest conservation need, and we encourage NRCS to continue this approach.

At-risk species should be listed as a conservation need where the State Conservationist can give higher priority for income forgone. Specifically, declining species are an important focus of society and EQIP.

However, landowners have little economic incentive to manage for these species because of costs of practices and management activities. Cost share and incentive payments should be maximized to help agricultural producers further the conservation of these species. Higher payment rates are key to affecting the conservation of species in most need.

Throughout the rule, there are references to the State Conservationist giving greater significance to various conservation practices which promote certain management or activities, including promoting pollinator habitat. We recommend that NRCS develop definitions for pollinator habitat and practice specifications for pollinators within the 644 (wetland habitat management) and 645 (upland wildlife habitat management) standards. FWS and State fish and wildlife agencies would like to work with USDA in updating these practices.

We look forward to working diligently with the Natural Resources Conservation Service (NRCS) to help deliver this important program to landowners and its benefits to the American taxpayers. Again, thank you for your consideration of our recommendations for the implementation of the Environmental Quality Incentives Program as authorized in the 2008 Farm Bill.

Sincerely,



Keith Sexson
Assistant Secretary of Operations
Kansas Department of Wildlife and Parks

Comments on Summary Section of EQIP final interim rule:

The need to deal with the loss of pollinators was mentioned frequently in the new farm bill. Currently there is not a definition for pollinator habitat in the rule, nor is there a definition or reference to pollinator habitat in NRCS policy or standards. We urge NRCS to provide a definition in the rule as well as to direct State Conservationists to establish minimum guidelines for pollinator habitat in the 645 Upland Wildlife Habitat Management and other appropriate standards. Since pollinators and bobwhite quail use similar habitats – low successional stage habitats with a wide variety of flowering plants, forbs and shrubs – ideally, such minimum guidelines could be written to benefit both.

General Provisions, Section 1466.3 – Definitions:

- Comments were requested on the definition of “**at-risk species.**” State Fish and Wildlife Agencies, in consultation and cooperation with the U.S. Fish and Wildlife Service, developed Comprehensive Wildlife Strategies (CWS) that address fish and wildlife species in need of conservation attention. Development of CWS involved state level stakeholder group input and it would be logical and efficient for USDA to rely on CWS for determination of at-risk species in each state. State and Federal Fish and Wildlife agencies should be consulted by USDA to determine which species could benefit from EQIP attention and the State Technical Committee should be engaged regarding how best to use EQIP resources in ways that support at-risk species. Furthermore, we urge USDA to utilize the language in the joint Memorandum of Understanding (MOU) between USFWS, AFWA and NRCS, which already defines species at-risk: “**Species at-risk refers to plant and animal species that are: listed as endangered or threatened under ESA; proposed or candidates for**

listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law.”

- Comments are requested on what type of **comprehensive planning activities** should be eligible for payment under EQIP. Comprehensive planning activities including forest management plans, wildlife management plans and invasive species treatment plans should be eligible for payment.

Management plans for forest resources should be complex and address the full range of resource needs as forest land is managed for production. Forests can be managed to provide agricultural products such as lumber and biomass for energy purposes as well as conserve soil, improve water quality, recharge groundwater and provide habitat for many species of wildlife. In addition, mistakes in management of forest resources can take decades to rectify and up-front planning is the path to wise use. It is appropriate for EQIP to help landowners pay for preparation of comprehensive management plans for forest land.

Wildlife management plans can integrate at-risk and recreationally important species habitat management as part of an overall EQIP resource management plan. It is appropriate for EQIP to help landowners pay for preparation of comprehensive management plans for forest land and wildlife. Biomass (energy) harvest plans should also be considered which take into account multiple resources including their impact on wildlife, and wildlife habitat including forest ecosystems.

Comprehensive planning activities including invasive species treatments plans should be another eligible activity, as effectively treating invasive species requires sustained approaches with follow-up monitoring and treatment activities. The current approach being used by EQIP to deal with invasive species does not provide the participating landowner with a plan or assistance after initial treatments of invasive species problems. Given the impact of invasive species on agricultural production, soil and water resources, and fish and wildlife habitat, comprehensive planning efforts are warranted and should be eligible for payment under EQIP.

- Comments are requested on the **types of forest management plans that may be eligible** for EQIP payment. In addition to the specifically mentioned Forest Stewardship Plan, other forest management plans eligible for EQIP payment should, at a minimum, address soil, water and wildlife needs in addition to sustainability of the forest community. An alternative to development of a Forest Stewardship Plan is the NRCS Prescribed Forestry Plan which contains similar criteria and is comprehensive in the resource needs addressed. In forest management, wildlife and sustainability of diverse forest systems should not be left to chance and should be clearly identifiable goals in any approved forest management plan. Sustaining healthy native forest communities should be a key goal of any plan eligible for EQIP payment.

SECTION BY SECTION COMMENTS AND RECOMMENDATIONS:

Sec. 1466.1 Applicability

The *Joint Explanatory Statement of the Committee of Conference* states that: “The Conference substitute adopts the House bill with amendment. Forest management is added to the program purpose, and forest land and energy conservation are added to the resources to benefit from the installation of conservation practices. Fuels management and forest management are added to the list activities for which the Secretary will assist producers in making cost-effective changes.” However, the EQIP Interim Final Rule does not mention fuels management - the omission of this important element may cause confusion in implementation of EQIP. Congress highlighted fuels management in the Farm Bill enacted into law and similar highlighting is appropriate in the EQIP Final Rule.

Recommendation: Clarify that fuels management should be part of the forestry section.

Sec. 1466.3 Definitions

- **Agricultural Land:**

Second sentence - "Other agricultural lands include cropped woodland, marshes..." Although marshes are listed here (as in the Legislation), this should be replaced with "wetlands" to be more accurate. Marshes are specific types of wetlands. Wetlands were used elsewhere in the document. For example, non-traditional production such as cranberry bogs. Because of EQIP's 60% livestock requirement we suggest a change in language that includes "other types of agricultural land **used for or suitable for the production of livestock**" in the definition of agricultural land.

Recommendation: Reword as follows: "Agricultural land means cropland, grassland, pasture, and other agricultural land, on which agricultural forest-related products, or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, **wetlands**, incidental areas included in the agricultural operation, and other types of agricultural land **used for or suitable for the production of livestock.**"

- **At-risk species:**

As previously mentioned, adopt the MOU definition for species at-risk. State Fish and Wildlife Agencies should be consulted regarding at-risk species best addressed through Farm Bill programs and the State Technical Committee engaged to develop approaches. We would prefer the word animal to be replaced with wildlife as we have done below. Wildlife is defined in the rule as "non-domesticated birds, fishes, reptiles, amphibians, invertebrates and mammals." Under the current definition a very rare breed of dog could be classified as an "at risk species."

Recommendation: *At-risk species* refers to plant and wildlife species that are: listed as endangered or threatened under ESA; proposed or candidates for listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law" and include State species of conservation concern such as those listed in the State Wildlife Action Plans." Consult with State Tech Committees, State Wildlife Action Plans, and USFWS for species of concern.

- **Beginning Farmer or Rancher:**

The 2008 Farm Bill emphasizes increasing program use by "historically underserved producers". This category includes beginning farmers and ranchers and on page 2312 1466 8 (e) of this rule 5% of EQIP funds are set aside for beginning farmers and ranchers. Unfortunately, past EQIP policy created a "Catch 22" when it came to working with beginning landowners by requiring 2 years of production income history before they qualify for this program. This means that new farmers and ranchers are denied program access when they may most need technical and payment assistance during their early establishment years. Additionally, new CRP rules allow transfer of expiring CRP to beginning farmers and ranchers and specifically mentions that such lands often have management issues and qualify for other farm bill programs such as EQIP.

Recommendation: Remove the language in the current EQIP policy manual that requires a 2 year income history to qualify for EQIP and replace it with a minimum earnings threshold that could be met the first year.

- **Non-industrial private forest land:**

Non-industrial private forest land needs to clarify that this does not apply to the planting of trees in ecosystems (based on soils) where they are not appropriate and would effectively convert ecosystems, disrupt ecological processes in those systems, and displace native wildlife and

pollinators in those systems. This definition includes the phrase "or is suitable for growing trees". This phrase should be removed or qualified to preclude the planting of trees in places that will further diminish habitat for at-risk species.

Recommendation: *Non-industrial private forest land* means rural land, as determined by the Secretary that has existing tree cover, or has forest derived soils and is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Sec. 1466.4 National Priorities:

- **1466.4 (a)** Plant health has been a past national priority resource concern and should be added. The elevation of forest land in EQIP should also be added as a priority. We recommend plant and forest health should be added as a 6th national priority. We commend NRCS for including At-risk species as a national priority of EQIP – this is essential to achieve sustainability of wildlife species that rely on agricultural landscapes for habitat, whether aquatic or terrestrial. The promotion of at-risk species habitat conservation must be kept, as this national priority also will be needed to address pollinator habitat concerns.

Recommendation:

1466.4(a)(4) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land;

1466.4(a)(5) Promotion of at-risk species habitat conservation; **and**

1466.4(a)(6) Conserving forest health and plant health for multiple resource values.

Sec. 1466.8 Program requirements

- **1466.8(c)(2)(iii)** The phrase "that is on private land" should be stricken as the focus of EQIP should be on the resource concerns on the lands controlled by the private landowner applying for the program

Recommendation: **1466.8(c)(2)(iii)** The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern.

- **1466.8 (e)** needs to also identify the national funds being set aside for CCPI.

Recommendation: **1466.8(e)** NRCS will establish a national target to set aside five percent of EQIP funds for socially disadvantaged farmers or ranchers, an additional five percent of EQIP funds for beginning farmers or ranchers, **and an additional six percent of EQIP funds for the CCPI.**

Sec. 1466.10 Conservation Practices

- **1466.10 (c)** The wording needs clarification so that water conservation practice payments are not limited only to land that has recent irrigation history

Recommendation: **1466.10(c)** A participant will be eligible for payments for water conservation or irrigation related conservation practices only on land that has been irrigated for two of the last five years prior to application for assistance.

- **1466.10(f)** The EQIP Final Rule should clarify that producers can receive assistance for conservation practices to deter some predators as identified in the Farm Bill and the Managers Report – otherwise, many will not recognize this is an option. This will also help illuminate the

intent that EQIP help achieve the new pollinator emphasis in that conflicts associated with black bear often involve beehive/pollinator situations.

Recommendation: 1466.10(f) A participant will be eligible for payments for proactive, non-lethal options to deter predators protected by the Endangered Species act of 1973, as well as delisted populations of gray wolves, grizzly bear, and black bears, as well as other protected predator species at the State Conservationists discretion with advisement from the State Technical Committee.

Sec. 1466.20 Applications for contracts and selecting applications

- **Part (b):** We commend USDA for including the establishment of applicant ranking pools; these have been very beneficial in addressing local wildlife issues and concerns, and we are pleased to see its inclusion. This section is important, provides flexibility, and should be kept in the final rule.
- **(b)(1)(iii):** How effectively and comprehensively the project addresses designated resource concern. This is very important and is critical to fish and wildlife conservation success. It will help ensure that effective conservation measures are deployed to benefit the resource concern and not just deploy the cheapest practice affecting the resource. In context with the preceding two bullets, this provision takes into account the resource benefits, but also allows for the most effective methods to address the resource concerns.
- **(b)(2)(i)** The final phrase “other than incidental land needed for efficient operations” should be stricken, as this should be dealt with in ranking and prioritizing applications. If the producer is bringing incidental land into irrigated production for efficiency as part of the project, any irrigation water that would have been saved and is applied to those new acres should apply against the reduction in water use from the practice

Recommendation: (b)(2)(i) Consistent with State law in which the producer’s eligible land is located, there is a reduction in water use in the agricultural operation, or where the producer agrees not to use any associated water savings to bring new land under irrigation production.

- **(b)(2)(ii)** This entire section should be stricken or rewritten. In current form, the current rule could allow EQIP contracts for water conservation or irrigation efficiency to be put in place without any net gain in water conserved, because additional acres are brought into production using that water. This section only requires a comprehensive assessment, have a project plan with management strategies, and consultation with relevant agencies; it does not require that net water conservation occur in the watershed as a result of an EQIP contract. If water is not being conserved, then those applications should not receive any priority.
- **(b)(4): No preferential treatment based on size.** While we understand that the purpose of this statement is to allow large and small properties to compete on a level playing field, there are circumstances involving at-risk species where a minimum habitat size is necessary for the management action to perform its intended function and therefore recommend the following language

Recommendation: (b)(4) The ranking will not give preferential treatment to applications based on size of the operation **unless a minimum size is necessary for the management action to perform its intended function for at-risk priority concerns.**

Sec. 1466.21 Contract Requirements

- **(b)(3)(i):** We are pleased with the inclusion of this provision as it relates to preventing practices that would defeat the purposes of the program. We encourage further clarification to state specifically

that there should not be implementation of practices that result in the degradation or conversion of native prairie, wetland, savanna, forest or other native habitats to grassland, cropland, monoculture plantings or other uses. EQIP should result in sustainable management when native habitats are managed for agricultural purposes.

Recommendation: 1466.21(b)(3)(i) Not implement any practices within the agricultural or forestry operation that would defeat the program's purposes, **including degrading or converting native habitats on the operation.**

Sec. 1466.23 Payment Rates

- **1466.23(a)** The advisory role of the State Technical Committee and local working groups should be used to help develop the list of practices.

Recommendation: 1466.23(a) The State Conservationist or designated conservationist with advice from the State Technical Committee and local working groups will develop a list of conservation practices, eligible for payment under the program, which considers:

- **1466.23 (a)(6).** At least one conservation practice related to each of the national priorities should be available to landowners applying for EQIP.

Recommendation: 1466.23(a)(6) For each national priority, at least one conservation practice that can be used to meet that priority must be in the list of conservation practices eligible for payment under the program

Then change the current 1466 23(a)(6) to 1466.23(a)(7)

1466.23(a)(7) Other pertinent local considerations.

- **1466.23(c)(iv)** At-risk species conservation, as a national priority, must be on this list. In most cases, activities landowners undertake for at-risk species conservation require additional costs on the landowners part that do not have any tie to improving land productivity or efficiency. Restoration and management of habitat for at-risk species, like restoration of native grasslands or management of forest land, can necessitate delay of harvest (and income foregone) in order to implement practices. Therefore, payments to offset income foregone are critical to achieving conservation benefits for many of these species in EQIP. The law and rules clearly state "may" in terms of determining priority, and for the above reasons, we recommend at-risk species for inclusion in the priority list.

Recommendation: 1466.23(c)(iv)(A) At-risk species conservation

Then the existing (A) through (G) in this section would become (B) through (H).

Alternative Recommendation: 1466.23(c)(iv)(E) At-risk species conservation and pollinator habitat development or improvement.

Sec. 1466.24 EQIP payments

- **1466.24(c):** For consistency in application of the program, we recommend insertion of language as in (a) to clarify "any 6-year period."

Recommendation: 1466.24(c) Payments for conservation practices related to organic production to a person, joint operation, or legal entity, directly or indirectly, may not exceed in aggregate \$20,000 per year or \$80,000 during any 6-year period. **For the purpose of applying this requirement, the 6-year period will include those payments made in fiscal years 2009-2014.**

1466.25 Contract modifications and transfers of land

- (a) Any modifications should be specifically consistent with and supportive of program purposes, and should be re-ranked to ensure that modifications do not result in a lower score than the ranking cutoff when the project was funded.

Recommendation: 1466.25(a) The participant and NRCS may modify a contract **provided that modifications are consistent with and will contribute to program purposes** if both parties agree to the contract modification, the EQIP plan of operations is revised ...”

Insert a new **1466.25(b) If a contract modification would result in a new EQIP ranking score that would fall below the state’s threshold score for funding, the producer must add another practice that would result in an overall EQIP score above the state’s threshold.**

The current 1466.25 (b) through 1466.25(e) would then become **1466.25 (c) through 1466.25(f).**

1466.36 Environmental credits for conservation improvements.

- We recommend that language more consistent with that used in the Healthy Forest Reserve Program (HFRP) should be used in place of the language used in this section.

Recommendation: 1466.36 Environmental Services Credits for Conservation Improvements. USDA recognizes that environmental benefits will be achieved by implementing conservation practices, measures, and activities funded through EQIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an EQIP contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to **ensure that program purposes as well as** the requirements of the EQIP contract. Where activities required under an environmental credit agreement may affect land covered under an EQIP contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such environmental credit agreements.