

Decker, Denise - Washington, DC

4/19

From: Christensen, Thomas - Washington, DC
Sent: Saturday, April 18, 2009 8:49 AM
To: Johnson, Roland - Washington, DC; Decker, Denise - Washington, DC; Rhodes, Maggie - Washington, DC
Subject: Fw: NPPC EQIP Comments
Attachments: 20090417-mf-NPPC Comments Interim Final EQIP Rule.pdf

A Farm Bill comment letter Thanks.

Sent from my BlackBerry Wireless Handheld

From: Michael Formica <formicam@nppc.org>
To: Greg.Johnson@usda.gov <Greg.Johnson@usda.gov>
Cc: Christensen, Thomas - Washington, DC; White, Dave - Washington, DC
Sent: Fri Apr 17 23:19:19 2009
Subject: NPPC EQIP Comments

Gentlemen,

Attached is a courtesy copy of the comments NPPC submitted this evening regarding the Interim Final EQIP rule. I submitted them through Regulations.gov but am unsure if they were delivered to the proper docket and so am forwarding you a copy as well.

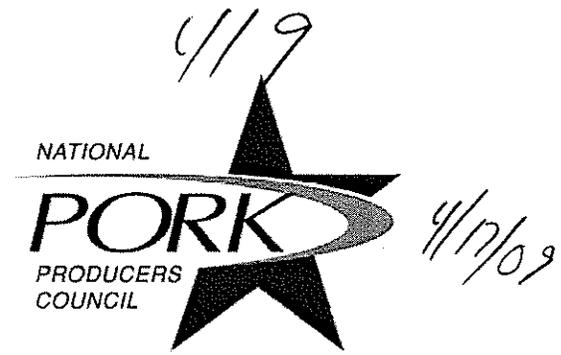
Thanks for your hard work on these and if you have any questions, as always, please don't hesitate to contact me.

Michael Formica
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4/18/2009

April 17, 2009

Mr. Greg Johnson, Director
Financial Assistance Programs Division, Room 5237
Natural Resources Conservation Service
U.S. Department of Agriculture
Washington, DC 20013-2890



RE: Comments regarding the interim final rule amending the existing Environmental Quality Incentives Program (EQIP) regulations (Docket Number NRCS-IFR-08005).

Dear Mr. Johnson,

Please see below the comments of the National Pork Producers Council (NPPC) regarding the interim final rule amending the existing Environmental Quality Incentives Program (EQIP) regulations incorporating programmatic changes as authorized by amendments in the Food, Conservation, and Energy Act of 2008; effective date January 15, 2009. (Docket Number NRCS-IFR-08005)

The NPPC is an association of 43 state pork producer organizations and the voice in Washington for the nation's 67,000 pork producers. The U.S. pork industry represents a significant value-added activity in the agriculture economy and the overall U.S. economy. Nationwide, more than 67,000 pork producers marketed almost 130 million hogs in 2007, and those animals provided total gross receipts of almost \$15 billion. Pork producers are strong and vital contributors to value-added agriculture in the United States, and we are deeply committed to the economic health and vitality of our businesses and the communities that our livelihoods help support.

Just as importantly, though, pork producers take a broad view of what it means to be environmentally responsible farmers and business people, and we have fully embraced the fact that our pork producing operations must protect and conserve the environment and the resources we use and effect. We take this responsibility with the utmost seriousness and commitment, and it was in this spirit that our producer members have made a major commitment to the Conservation Title of the 2002 Farm Bill, its implementation, and the 2008 Farm Bill that amended those provisions.

The Global Voice for the U.S. Pork Industry

Mr Greg Johnson

Re: NPPC Comments on Interim Final EQIP Rule: Docket # NRCS-IFR-08005

April 17, 2009

NPPC is proud of how its commitment in 2002 helped dramatically increase funding for conservation programs, particularly for EQIP. The re-emphasis given in the 2002 Farm Bill ensured that EQIP be directed toward helping farmers deal with their top federal and state regulatory challenges. We looked forward to enthusiastically participating in the EQIP program to help us continue to improve our environmental performance and meet and/or exceed any state or federal regulatory requirement.

Our support for these programs continues today, but the nation's pork producers were sorely disappointed by the 2002 Farm Bill's EQIP program in its failure to make more than a minimal contribution to our ongoing environmental efforts. This failure was certainly not universal and there were some states and instances where the program has proved to be of great assistance to producers to improve their environmental performance. But overall, the record was clear that EQIP was missing a tremendous opportunity to have a dramatic effect on the environment by failing to work with many of our producers who are ready to take their performance to the next level. We reported during Congressional hearings on this topic in May and June 2004, and then in June, July and September 2006 and again in April and May of 2007. Below are our comments on this interim final rule relative to some of the core positions we advocated in these hearings. Following this section we will provide specific comments on additional items in the interim final rule.

NPPC Core Farm Bill Positions and the Interim Final Rule

Helping producers address regulatory requirements—As we noted above, one of our top EQIP issues in the 2002 Farm Bill was to ensure that the program was fully able and funded to assist pork and other agricultural producers in meeting their environmental regulatory challenges, and in the process significantly improve their environmental performance. Maintaining and further emphasizing this priority was important to us in the 2008 Farm Bill debates, and we were pleased that this was again stated as a priority for EQIP. We note this priority's mention and inclusion in subsection 1466.1 on "Applicability", subsection 1466.4 on "National priorities", subsection 1466.6 on "State allocation and management" and throughout this interim final rule where it is applicable. We continue to fully support this approach and encourage NRCS to ensure in the implementation of EQIP that that otherwise qualified pork producers facing

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these specific regulatory challenges do in fact receive appropriate EQIP assistance to these ends.

Adding to existing advance conservation systems—We found during the implementation of EQIP under the 2002 Farm Bill that many pork producers' EQIP applications were not ranking well because they had already invested in the core elements of a sound manure management systems. As a result, the additional conservation practices that would have added tremendous marginal value to their operations' performance were denied. We advocated during the 2008 Farm Bill for EQIP amendments that would allow NRCS to quickly approve applications that needed a single or limited number of practices to complete such a conservation system. We support the measures in the interim final rule at subsection 1466.20(b)(vii) that direct the State Conservationist, when ranking applications, to consider the ability of the application to "improve existing conservation practices or systems, which are in place at the time the application is accepted, or that complete a conservation system." NRCS should take this provision a step further and ensure that the approval process for such applications be streamlined so that there is little or no delay in an otherwise qualified applicant's ability to secure the funds to adopt this single practice or a limited number of such practices.

Financial assistance must be made available for mobile equipment—USDA conservation cost share programs have generally prohibited providing cost share funds for equipment that is highly mobile due to concerns that there is too great a potential for that equipment to not be used by the cost share recipient, and that this is too hard for NRCS to monitor. One of pork producers' greatest needs is for new, expanded, and more precise manure utilization equipment to aid efforts to apply their manure to more crop acres, and much of this equipment is mobile. NRCS must make every effort in this rulemaking to establish explicit mechanism where the responsible producer needing to improve the precision and accuracy of their manure use system for crop production can qualify for EQIP financial assistance for these measures.

Evaluating and ranking similar EQIP contracts—NPPC found under the 2002 Farm Bill that pork producers were commonly finding their applications denied where the pool of applications being evaluated included resource concerns and conservation practices wholly unrelated to pork's environmental needs. This "apples to oranges" comparison was not only disconcerting to producers but it

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also effectively frustrated the core EQIP policy of seeking cost effective measures for the issues needing to be addressed. If the measures needing to be addressed vary greatly across contracts, then there is no sound basis for comparison of the effectiveness of the proposed measures for which funding is being sought. NPPC supported the 2008 Farm Bill provisions that directed NRCS to establish separate evaluation pools for applications with basically different resource concerns and measures to address those concerns. We support the approach developed in this interim final rule at subsection 1466 20(a)(2) implementing this new Farm Bill provision.

The support for the development of CNMPs remains inadequate—NRCS has over the last several years clearly made a major commitment to supporting the development of Comprehensive Nutrient Management Plans (CNMPs) by animal producers. But in several concrete and practical ways, this commitment is not yet well integrated into several states' EQIP programs. A significant portion of this issue was the failure to offer a sufficient level of payment for the cost of developing a CNMP, an issue that NPPC was pleased to see NRCS address in the Technical Service Providers (TSP) interim final rulemaking where payment rates are to reflect greater local relevance to the private sector costs of such work. The 2008 Farm Bill also addressed this issue by making it clear throughout EQIP that a CNMP is a practice for which producers can receive assistance, and this interim final rule has adopted those measures.

But NPPC also advocated in the 2008 Farm Bill process for the concept whereby NRCS would contract with a single TSP for the development of multiple CNMPs for multiple producers. Such a measure saves NRCS time and money in the form of less oversight needed to ensure quality control, and it relieves the producer of the management issues associated with finding a qualified TSP and managing the transfer of funds that could just as easily go directly from NRCS to the TSP. We see no provision in this rule that would allow EQIP work with TSPs in EQIP using financial assistance funds in support of such batch efforts and we encourage NRCS to make provisions for the use of such an approach in the final rulemaking.

Pending air emissions challenges—NPPC advocated during the 2008 Farm Bill for amendments to EQIP to ensure that air quality protection practices through emissions reductions and other measures were a clear priority for the program, both as a general matter and as a matter of environmental regulations. We were

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pleased that the 2008 Farm Bill adopted these measures and that this interim final rule has also properly adopted these provisions at subsection 1466.4 on "National priorities", and in subsection 1466.6 on "State allocation and management".

Other Specific Comments on Interim Final Rule Measures

Defining cost effectiveness—Subsection 1466.3 defines cost effectiveness as "the least costly option for achieving a given set of conservation objectives." NPPC believes this to be a sound definition, but want to ensure that NRCS does not understand this definition to mean that the options referred to include some "hypothetical" option or options that are not available to the producers applying for EQIP assistance. Instead, this cost effectiveness test needs to be applied to those options actually available and that are applicable to the conservation objective at hand.

EQIP Plan of Operations—NPPC supported during the 2008 Farm Bill the efforts to reduce as much as possible the duplication that producers must deal with in complying with federal, state and local environmental requirements while also participating in EQIP. We support, therefore, the provisions at 1466.8 that allows a plan developed for air or water quality permitting purposes to qualify as an EQIP plan of operations where that permitting plan includes comparable elements as the plan of operations. We encourage NRCS to make clear that it intends for State Conservationists, in implementing this measure, to use the fullest appropriate flexibility in judging the relative comparability of the plans in this circumstance keeping in mind the critical goal of eliminating duplication wherever possible.

Approval of an EQIP Plan of Operations—We note that in subsection 1466.9(a) that all conservation practices in the EQIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable NRCS technical guidance. In the case where a plan used for purposes of getting a water or air quality permit is considered comparable to the EQIP plan of operations, NRCS should make absolutely clear that this "approval" process, consistent with NRCS technical guidance, is an approval for the EQIP plan of operations only, and that NRCS approval does not extend to the legally required measures in the comparable air or water quality permit. NRCS has no jurisdiction in those latter measures, and does not want such jurisdiction, but

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given the solid effort to reduce duplication and redundancy, confusion could arise in both producers and NRCS staff's minds. This should be made clear in the final rule to avoid such possible confusion.

Payment Rates for CNMPs—Given the value and importance of a Comprehensive Nutrient Management Plan to helping to protect the water quality through provision of detailed direction and guidance on the sound use of manure, NRCS has attempted to make the development of CNMPs for livestock producers a significant priority. NRCS and livestock agriculture recognize that in many ways a CNMP is comparable to the traditional NRCS conservation plan for producers' farms that for decades guided its conservation work with those producers. NPPC believes that this priority needs to extend fully into the use of the EQIP program and its support for CNMP development and use. To this end, in setting the payment rate for CNMPs, as a conservation practice, the provision at 1466.23(c)(i), through provision of only up to 75% of the cost of a CNMP, will diminish EQIP's ability to achieve this goal and is at odds with language in the 2008 Farm Bill relative to the payment rates for TSPs. Were NRCS to pay using its discretionary funds for its own staff to prepare a CNMP for a producer, the cost to NRCS would be 100%. In the same manner, where a producer needs to turn to a TSP for assistance with the development of such a plan, EQIP should be available to pay for 100% of those costs. We note that in the 2008 Farm Bill, in the TSP section, Section 1242(f)(5) directs the Secretary to provide for TSP payments that are "fair and reasonable", and leaves to the Secretary to establish specifically what those terms mean in the context of the Secretary's other authorities. In the case of payments for the purposes of CNMP development, we think the value and merit of CNMPs, and the general priority given to them by NRCS, indicates that the final rule should provide for a payment rate for the development of a CNMP as a conservation practice at 100% of its costs.

Thank you for your consideration of these comments. The U.S. Pork Industry looks forward to continuing our cooperative relationship with USDA and working with the agency on successfully implementing the Environmental Quality Incentive Program.