



American Farmland Trust
SAVING THE LAND THAT SUSTAINS US

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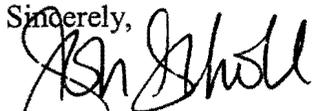
April 15, 2009

Financial Assistance Programs Division
Room 5237-S
Natural Resources Conservation Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-2890

Enclosed are comments from the American Farmland Trust concerning the Environmental Quality Incentives Program Interim Final Rule (Docket Number NRCS-IFR-08005) as published on January 15, 2009 and amended on March 12, 2009. We request that our comments be considered and adopted as NRCS revises the rule and implements the program.

We appreciate the opportunity to provide these comments and encourage you to contact us should you have any questions.

Sincerely,



Jon Scholl
President
American Farmland Trust

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American Farmland Trust Comments
On the Interim Final Rule for the
ENVIRONMENTAL QUALITY INCENTIVE PROGRAM (EQIP)

Docket Number-NRCS-IFR-08005

Issue: Maximizing cost effectiveness in EQIP

In the rule the purpose of EQIP includes optimizing environmental benefits. The definition of "cost-effectiveness" in the rule states that it means the least-costly option for achieving a given set of conservation objectives.

AFT Comment: One of the ways to optimize environmental benefits is to focus EQIP funding as best as possible to the areas and operations that can be most beneficial in addressing the specified resource concerns for the community or area. AFT recommends that NRCS provides guidance to states and state technical committees so that they can focus or target funding to the greatest extent possible. We recommend that NRCS state conservationists establish a ranking pool for designated geographic area(s) for selecting EQIP applications for funding. The designated geographic areas should be based on the resource problems to be addressed. We do not recommend a specific mix for targeting verses other funding as that would lose the flexibility needed at the state level to best address resource concerns. However, NRCS should strive to achieve the most "bang for the buck" in EQIP expenditures and focusing funding to specific problem areas in a state would help achieve a given set of conservation objectives as defined by the state technical committee and the state conservationist. AFT recommends that the definition of cost effectiveness be broadened to include the concept of targeting EQIP resources.

Issue: Forest management as an additional EQIP purpose and the definition of forest management plan.

The rule and statute include forest management, together with agricultural production and environmental quality, as purposes for EQIP. The rule also defines forest management plan by who prepares and approves the plan, but fails to include in the definition any statement of the conservation purpose or resource concerns that should be considered in the forest management plan.

AFT Comment: Although highly desirable that forestry conservation was added to eligible EQIP assistance, we believe that such assistance must be limited to resource conservation purposes, not forestry management in general. For example, the inclusion of a practice or activity as part of a forest management plan does not automatically make it a conservation practice. To be eligible for EQIP financial assistance, the practices must have a specific conservation purpose and be included in the NRCS Field Office Technical Guide. The conservation purpose should reflect the national priorities listed in the rule.

AFT recommends that NRCS revise the definition to include a specific statement regarding the conservation purpose or the resource concern(s) to be addressed and thus insure that EQIP funds are used for conservation rather than general forestry activities. For example, in the explanation of the rule, reference to the forest management plan specifically refers to “actions to be taken by the participant to conserve and enhance soil, water, air, fish, and wildlife resources on such land.” However, that language is missing from the definition in 1466.3 in the actual rule. AFT recommends that the explanatory statement be added to the definition in the actual rule.

Issue: EQIP assistance for organic operations

The rule rightfully includes EQIP assistance for conservation related to organic production, and special financial assistance is earmarked for that purpose.

AFT Comment: AFT lauds the inclusion of organic conservation measures as being eligible for EQIP assistance. We emphasize, however, that assistance to organic producers is for conservation related to organic production and not simply organic production practices. We believe that the rule states this fairly, but believe that the agency manuals and technical guides must also reflect the conservation purpose and benefit of such practices when applied to organic operations. NRCS should insure that field staff be trained on this important difference and that state conservationists and state technical committees be alert to insure the most effective use of EQIP funds to address priority resource concerns. Further, we believe that NRCS correctly allows eligibility for EQIP assistance beyond the amounts for organic related conservation when an operation also has a portion of the operation that is not organic and would qualify for regular EQIP assistance for practices contributing to the listed national priorities.

Issue: The EQIP application grouping and ranking process.

The rule states that applications will be grouped by similar crop, forestry, and livestock operations for evaluation purposes. It goes on to say that ranking pools to address a specific resource concern and other factors may be used.

AFT Comment: In the ranking process, grouping by similar operation is desirable, but this does not mean that applications can be grouped by resource concern. Grouping by resource concern fails to consider the multiple or joint benefits of many conservation practices and the advantages to the producer to find least cost options to maximize benefits overall for his or her operation. The specific exclusion of the clause “Treatment of multiple resource concerns” [1466.20 (b)(3)] in the *former version* of the EQIP rule from the new rule is a step backwards. AFT recommends that NRCS use the ranking pools by type of operation and geographical area, and avoid use of a ranking pool by specific resource concern. We note that the use of a ranking pool by resource concern is not mandatory in the rule, so we recommend that NRCS discourage that type of ranking

pool unless and until there is a valid method for considering multiple benefits from EQIP practices in the ranking process.

Issue: Payment limit waiver

The statute and the rule allow for a waiver of the \$300,000 limit for each EQIP contract. The rule lays out specific criteria under which the chief may waive this specific dollar limit and allow funding up to \$450,000, which was the prior limit.

AFT Comment: AFT agrees with the listed criteria and believes that the site-specific documentation called for is a reasonable requirement. AFT recommends, however, that greater priority should be placed on criteria 1 concerning the “substantial positive impact on critical resources” in or near the project. This is particularly important where the project would protect drinking water supplies or help in air quality attainment or other areas where public safety would be involved. AFT believes that the focus should be on the environmental benefits from the EQIP investment and that NRCS should be size neutral as it considers any request for a waiver of the limit. AFT recommends that the rule be revised to indicate that a greater emphasis will be placed on the first criterion.

Issue: Payment rates and income foregone

The rule establishes limits for payment rates at 75 percent of costs and 100 percent of income foregone or both where applicable. It further allows higher priority for certain practices, including animal carcass management technology and pollinator habitat development or improvement.

AFT Comment: Payments for animal carcass management should only be for income foregone as a result of the environmental practice and benefit related to the method of carcass disposal, not income foregone due to death of the animal or for otherwise routine costs of disposal. Similarly, payments related to foregone income for pollinator habitat should be limited to income lost resulting from the conservation practices associated with the pollinator habitat, such as providing permanent vegetative cover for selected acres otherwise used for production but now are used for this pollinator habitat. AFT recommends that the final rule explicitly limit these payments amounts to the difference between what was implemented for the environmental purpose compared to what would have been implemented without the environmental purpose. In this manner, the payment amount would reflect the actual environmental benefit rather than be a subsidy for the agricultural operation per se.

Issue: Environmental credits

The rule explicitly acknowledges that environmental credits may be gained from implementation of practices and activities under EQIP. While not claiming any interest

on these credits, NRCS retains authority to ensure proper operation and maintenance for EQIP funded improvements.

AFT Comment: AFT applauds NRCS for both acknowledging the potential of environmental credits from applied conservation as well as stressing the need for proper operation and maintenance (O&M) of conservation measures. We believe that obtaining an O&M compatibility determination from NRCS is a prudent action for a producer entering into any environmental credit agreement. AFT encourages NRCS to insure that field staffs are appropriately trained for undertaking such on site compatibility determinations. We also encourage NRCS to work actively with those engaged in developing and expanding environmental credit markets to insure that protocols for credit agreements and NRCS O&M requirements are compatible.

Issue: Technical services by TSP's

The EQIP rule essentially repeats the earlier (2003) EQIP rule concerning use of third party providers.

AFT Comment: Technical services provided by qualified technical service providers (TSP's) under the EQIP program should have the same terms and payment rates as listed for TSP's under 7 CFR Part 652. By this, we mean that the term of contracts and the payment rates should be based on what is in the rule governing technical assistance for third party providers. AFT recommends that the EQIP rule specifically acknowledge this by adding a clause under Part 1466.11 (the EQIP rule) that indicates that the agency will apply Part 652 (the TSP rule) in the use of technical services by TSP's for EQIP assistance.

Issue: Conservation Innovation Grants

The rule explanation discusses conservation innovation grants, although the actual rule only includes reference to certain costs not being able to be funded by CIG resources.

AFT comment: The Conservation Innovation Grant program is an extremely important part of the conservation mission at NRCS. AFT believes that NRCS should manage the program such that both innovative approaches as well as innovative practices are included when seeking proposals for possible projects. Innovative approaches, such as those developed and used in the BMP challenge project, can help stimulate widespread adoption of best management practices on the landscape. Experiences gained from projects focused on innovative approaches may be immediately useful for certain types of operations in achieving improved protection of the landscape, but may also be more broadly useful for all types of agricultural operations as NRCS addresses new program approaches under the Soil and Water Resources Conservation Act as reauthorized in the 2008 Act.

The added emphasis on air quality concerns will be particularly helpful in locations where air quality attainment has been difficult to achieve. AFT recommends that NRCS use the CIG program funding for air quality for the next two years to identify and determine relative effectiveness of methods and practices to address air quality concerns in areas of impairment. To do so, we recommend use of the air quality task force already established under Section 391 of the Federal Agricultural Improvement and Reform Act of 1996 to review such information on practices and activities to achieve air quality improvements and to make recommendations to the Chief prior to direct funding of such practices through EQIP.

AFT recommends that NRCS give priority to the development of standards and EQIP payments rates for innovative practices to assist conservation efforts of specialty crop producers and, where applicable, for energy conservation.