

February 3, 2009

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, D.C. 20250

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Dear Secretary Vilsack:

There are critical problems with the Interim Final Rule (IFR) for the Environmental Quality Incentives Program (EQIP) that you inherited from the last Administration. We are writing to urge you to issue guidance to the NRCS State and field offices to clarify key components of the rule and to place your own stamp on implementation of the program in Fiscal Year 2009 and beyond.

We will have additional and more extensive comments on the IFR which we will submit for the public comment record in March, but have pulled out six key items that we believe demand your immediate attention.

We are not proposing that the IFR be pulled back or that its comment period be extended. Rather, what we are recommending is that additional guidance be sent to the field, prior to issuance of a final rule late this year, to more fully implement the program in 2009 to match 2008 Farm Bill changes and key points in the agricultural platform of President Obama. Then, after the comment period is over, these same concerns can also be integrated into the final rule.

The six issues we urge you to issue guidance on follow below.

1. Add the Missing New National Priorities

Issue a clarification that the final rule will correct the IFR with respect to national priorities by including the new national priorities added by the 2008 Farm Bill (energy conservation, organic systems, and forest management) and direct that these farm bill priorities – plus soil quality and climate change mitigation – be incorporated into the program for the 2009 program year in addition to the five national priorities (water quality, water conservation, air quality, soil erosion, and at-risk specific habitat conservation) listed in Section 1466.4(a) of the IFR.

It is very surprising to see the IFR disregard the new purposes and priorities for EQIP added by Congress in the 2008 Farm Bill. There was considerable attention and debate given to energy conservation, organic farming, and forest management during the farm bill process, culminating in their inclusion in the final language as the only additions to EQIP Purposes relative to previous law. These are important expansions of the program and should have been included in the listing of national priorities. In addition, given the new Administration's commitment to addressing climate change, soil quality enhancement (including carbon sequestration) seems like it would be too important to leave completely out of the mix of national priorities for EQIP.

These four items – energy conservation, organic farming, forest management, and soil quality - should be added to the five items in the current IFR, first by way of 2009 guidance to the field, and ultimately through changes in the final rule.

2. Payment Limitations

Issue guidance to the effect that policy for granting waivers to exceed the \$300,000 payment limit (allowing payments of up to \$450,000) is under economic and environmental review, and that while the review is ongoing, there will be a moratorium on any contracts exceeding \$300,000.

Commence an economic and environmental analysis and evaluation, including cumulative impacts on watersheds, aquifers and other eco-regions of methane digesters, center pivots, and any other particular practice or technology that may have received larger contracts in the past.

President Obama's agricultural platform rightly called for stricter EQIP payment limits: *"Unfortunately, the 2002 Farm Bill lifted the cap on the size of livestock operations that can receive EQIP funding, enabling large livestock operations to receive EQIP payments and subsidizing big CAFOs by as much as \$450,000. Barack Obama and Joe Biden supports reinstating a strict cap on the size of the livestock operations that can receive EQIP funding so that the largest polluters have to pay for their own environmental cleanup."* Congress made a small but important step in that direction in the 2008 Farm Bill with the reduction to a \$300,000 limit, but a vague and ambiguous waiver authority was also granted.

We urge you to adopt a moratorium on waivers until a thorough analysis can be completed to determine from an economic and environmental viewpoint whether waivers are likely to have merit. The costliest technologies that have benefited from EQIP assistance also paradoxically tend to have the shakiest environmental rationale, making the case for a moratorium particularly sound. A thorough review is called for so that fully vetted criteria for approving possible waivers in the future can be developed.

Issue a clarification that the \$80,000 limitation in the IFR for organic production is specifically and solely for organic conversion assistance contracts. Organic farmers in general should be subject to the same \$300,000 limitation to which all other producers are subject.

The legislative history overwhelmingly shows that the special \$20,000 a year/\$80,000 four year limit is intended to apply to organic conversion assistance, in which new fields or herds are transitioning to organic production, not to existing organic producers on existing organic acres seeking basic EQIP assistance. The whole rationale for the lower limit was to find a balance between encouraging conversions while not getting the incentive so high that it overwhelmed the organic marketplace. The IFR seems to apply the lower limitation to all organic producers, an interpretation that is simply not justified by the legislative history. An immediate clarification will help ensure there is not confusion on this point at the state and local implementation level.

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3. CAFOs

Issue guidance to the effect that EQIP assistance for approved conservation practices for animal waste storage, treatment, and transport may be approved for existing confined animal feeding operations, but not for new or expanding CAFOs.

In addition, the guidance should state that no EQIP assistance may be approved for AFOs or CAFOs built in 100-year floodplains, unless the assistance is related to moving the facility out of the floodplain.

A NEPA review is long overdue. Based on such a review, a decision might be made to reinstate via regulation the 1996-2002 cap on the size of livestock operations that can receive EQIP funding for animal waste storage and transport facilities and equipment. In the meantime, it should be abundantly clear that EQIP should cease and desist from providing assistance for new and expanding CAFOs. EQIP was not intended to be a livestock production subsidy program or an incentive to concentrate production, yet that is what it has in part become. Animal waste storage and treatment facilities have become by far the largest single user of EQIP funds, reducing funds available to small and mid-sized family farms and to sustainable grazing systems.

The IFR does not prohibit EQIP funding to new or expanding CAFOs, and many NRCS state office already permit large CAFOs to expand even further and still qualify for maximum EQIP compensation. Issuing guidance to prohibit funding to new and expanding CAFOs sends a clear message that, consistent with the President's strong and heartfelt campaign promises, the federal government will not subsidize the expansion of a model of production that has proven to be a burden on public services and surrounding communities.

We included many additional recommendations on this subject in our memo on EQIP to the USDA transition team (attached) which should also be considered in developing the final rule. The two recommendations above, however, form the core of the message we believe needs to be sent immediately through additional guidance prior to development of the final rule.

4. Organic Conversion

Issue guidance to the effect that (a) all states and all counties must make the organic conversion practice available to producers in the state and county and (b) organic conversion proposals will be ranked and processed as a separate subcategory within the program.

Issue an elaboration of the IFR to explain that organic conversion assistance may be implemented via a special organic conversion "practice" standard with its own special practice code (as is the case for the AMA program in the Northeast) or through an interim conservation practice standard built off of a combination of existing conservation practices that form the heart of organic farming systems conservation work (as is the case in several states that already have experimented with organic conversion through EQIP), but that in either event, the conservation

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practice or system must include an organic system plan developed under the National Organic Program.

Issue guidance requiring state offices to estimate their agency capacity and expertise to deliver organic conversion technical assistance and, based on that assessment, to develop cooperative agreements with entities demonstrating experience and expertise in assisting organic conversion, including non-profit organizations, institutions of higher education, consultants, or qualified third-party technical service providers with organic expertise.

Issue guidance to clarify that organic conversion technical assistance shall include production, risk management, and marketing assistance, in addition to conservation assistance, to help ensure successful conversions and the attendant conservation and environmental benefits.

Issue guidance urging state offices to do additional education and outreach on organic conversion since it is a new purpose of EQIP and the 2008 Farm Bill includes a specific directive for new outreach to specialty crop and organic producers. Include cooperative agreements efforts for such education and outreach.

The IFR sadly completely misses the mark on organic conversion. Ultimately, the rule will need to include a much fuller treatment of the new program option. For 2009 and for early planning for 2010, however, it is critical that the elaborations noted above go out in the form of guidance documents to the state and local offices.

The Managers language in the Farm Bill conference report is instructive: *“The Managers expect EQIP to be available to organic producers for conservation activities related to organic transition and production. The Managers expect EQIP to be available to producers who are transitioning their operations to certified organic production and organic producers who may be transitioning additional acres or animal herds. The Managers are aware that organic conversion is a management-intensive activity and therefore encourage the Secretary to provide levels of technical and education assistance for organic conversion commensurate to the need.”*

Ultimately there may very well be a need to reserve a specific percentage of funding within EQIP within each state for organic conversion, to ensure that needs are being met. At the outset, however, the state and local offices need specific instruction to ensure that new and expanding organic producers in the area do in fact have access to the program and are treated as a separate class for ranking purposes. Without such assurances, the organic conversion portion of EQIP added by the new Farm Bill will have little or no meaning to farmers seeking assistance.

For states that have never offered organic conversion as an option in the past, it will be particularly important to have guidance that explains the two primary delivery mechanisms used to date – the separate, stand alone organic conversion practice standard, or the interim practice standard that is a subset of several existing conservation practices standards (generally including conservation crop rotation, cover cropping, prescribed grazing, and pasture planting). Ultimately

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it makes sense for there to be a national solution, probably in the form of a national conservation practice standard for organic conversion. If a national solution is still possible for 2009 that would be great, but assuming it is not, we urge you to at least clarify the available options to the state offices.

The organic conversion assistance option will not get off the ground successfully without the technical and educational underpinnings that will make it an effective program. It is paramount, therefore, to get cooperative agreements in place with the organizations, agencies, and individuals who can deliver the full range of assistance that newly-converting farmers will require. Work on this aspect of the program needs to start immediately. A message from headquarters to the states will be critical to jump start this process.

5. Select Regionally-Based Priority Resources Concerns

Bring EQIP and CSP into alignment to improve the efficiency and effectiveness of conservation assistance by issuing guidance to the states that for EQIP and CSP, each watershed or eco-region within the state should have designated up to 5 specific resources concerns.

Establish these selected specific resource concerns as priorities when allocating EQIP resources according to section 1466.4(b)(2) and section 1466.6 and when ranking EQIP applications with respect to ranking criteria (b)(1)(ii) and (iii) in section 1466.20 of the IFR.

Direct that the State Technical Committees be utilized on an ongoing basis for providing advice in the development and refinement of priority resource concerns.

Coordinating the implementation of the two largest working lands conservation programs will bolster the effectiveness of both EQIP and CSP and will increase the likelihood of success in solving key resource concerns in a given geographic area. Over the next four years, there is nearly \$9 billion in farm bill funding for the programs combined, representing an enormous opportunity for major progress on meeting critical conservation and environmental needs while boosting farm income.

Melding the conservation goal setting and planning process will streamline agency operations and intensify positive results on the ground. It will also improve communications to farmers and ranchers about the primary purposes of conservation assistance in a given region and enable clearer communications about the two program options and how they relate to each other. Over time, farmers and ranchers will be able to use EQIP technical and financial resources to get more conservation on the ground, addressing key problem areas, and then move on to more advanced stewardship practices and sustainable systems through CSP.

It is essential for State Technical Committees and Local Working Groups to become engaged in this process of making recommendations to the State and national office about watershed or eco-region priority concern selection now, in 2009, so the system can be full blown by the start of the next fiscal year in October 2009.

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Therefore, we urge you to issue guidance that will bring the selection of resource concern priorities for the two programs together. The CSP statute provide for not fewer than three and not more than five per watershed or region. In our view, most areas will be able to make good use of all five, and we would encourage selection of five in most cases for both CSP and EQIP. We believe the guidance should instruct State offices to start a strategic planning process to make selections by using their State Technical Committees to gather and refine stakeholder input and to time the process so that final decisions can be made by September 30, 2009.

6. Encourage Comprehensive Conservation Planning Assistance

Issue guidance to clarify that EQIP financial assistance may now be made, per the new farm bill, for comprehensive conservation planning assistance for all farmers, ranchers, and growers, not just for comprehensive nutrient management planning for animal feeding operations. (The IFR only references CNMPs, but fails to mention comprehensive conservation planning assistance for everyone else).

Provide a definition of comprehensive conservation planning based on the National Planning Procedures Handbook.

Encourage state and county offices to encourage producers who express an interest in CSP but who may not be qualified to sign up for comprehensive conservation planning assistance under EQIP to help them prepare for possible future CSP participation.

The 2008 Farm Bill provides that EQIP-eligible conservation practices include “(B) conservation activities involving the development of plans appropriate for the eligible land of the producer, including (i) comprehensive nutrient management planning; and (ii) other plans that the Secretary determines would further the purposes of the program under this chapter.” The IFR includes a CNMP provision but does not provide comprehensive conservation planning assistance for the whole rest of agriculture beyond confined animal facilities. In our view, “other plans” as determined by the Secretary should most assuredly include comprehensive conservation planning for total farm resource management systems.

This oversight is easily rectified by guidance to clarify that technical and financial assistance for comprehensive conservation planning is allowed and indeed encouraged under EQIP.

A definition for comprehensive conservation planning is supplied by the National Planning Handbook. Summarizing, a comprehensive conservation plan would:

- identify conservation and environmental problems, opportunities, and concerns
- identify conservation and environmental objectives
- inventory natural resources and environmental conditions and establish benchmark data for designated land and resources
- formulate and evaluate alternative approaches to improve natural resource and environmental conditions

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- select alternatives to meet total resource management system
- prepare schedule for conservation system implementation

Providing assistance for comprehensive conservation planning will improve applications to both EQIP and CSP and will increase the ultimate effectiveness in reaching program goals. For producers who do not yet qualify for CSP, conservation planning assistance through EQIP can also provide an important stepping stone to enhance future opportunities to participate in the stewardship program.

Thank you for your attention and consideration to these recommendations for EQIP guidance materials.

Sincerely,

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