



MISSOURI DEPARTMENT OF CONSERVATION

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JOHN D. HOSKINS, Director

April 16, 2009

Financial Assistance Programs Division
 US Department of Agriculture
 Natural Resources Conservation Service
 1400 Independence Avenue
 SW Room 5237-S
 Washington, DC 20013

Dear Director:

The Missouri Department of Conservation (Department) is a state agency responsible for the management of fish, forest and wildlife resources in the state of Missouri. The Department provides technical assistance to USDA-NRCS for the implementation of Farm Bill conservation programs including the Environmental Quality Incentives Program (EQIP). We offer the following comments for the Environmental Quality Incentives Program rule, **Docket Number NRCS-IFR-08005**, posted in the Federal Register:

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 Missouri and 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. Forest land that is interspersed with cropland and grazing land on rural landscapes is of the fabric that helps deliver conservation from farms. Care should be taken to avoid use of EQIP to encourage or cause degradation of wildlife habitat such as through loss of plant diversity in prairie or forest settings or alteration of wetland hydrology that converts emergent wetlands to deepwater in order to capture water for other purposes. In addition, EQIP should be used wisely in placement and development of small impoundments on the landscape so as to not capture so much runoff that stream flow is diminished to the detriment of public needs and aquatic species. In the 2008 Farm Bill enacted into law, Congress clearly meant to increase attention to forest resources through EQIP as well as other Conservation, Energy and Forestry Title programs and initiatives. This is appropriate due to the increasing importance of forest land to all citizens of the nation.

COMMISSION

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 4/19/09

The following thoughts are tailored to requests for comment as outlined in the Summary Section:

Summary Section

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 immediately move to provide a definition in the rule as well as direct State Conservationists to establish minimum guidelines for pollinator habitat in the 645 Upland Wildlife Habitat Management and other appropriate standards.

➤ Page 2298, Summary of Provisions, Subpart A – General Provisions, Section 1466.3 –

Definitions:

- Comments are requested on the definition of **“at-risk species.”** We urge USDA to utilize the language in the joint MOU between USFWS, AFWA and NRCS, which already define species at-risk. **“For purposes of this MOU, 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”** and include State species of conservation concern. State 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 deploy EQIP resources in ways that support attention to at-risk species.
- Comments are requested on what type of **comprehensive planning activities** should be eligible for payment under EQIP. Forest management plans should be eligible for payment. 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. Management plans for forest resources should be complex and address the full range of resource needs as forest land is managed for production. 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. Biomass (energy) harvest plans should also be considered which take into account multiple resources.
- 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.

The following comments are in association with **specific elements** of the Interim Final Rule for EQIP:
Part 1466 (Interim Final Rule) – Environmental Quality Incentives Program:

- **Page 2308, Subpart A – General Provisions, Sec. 1466.1 – Applicability:**
 - It is appropriate to elevate attention to forest management EQIP but this should be done in ways that sustain native forests and incorporate needs of fish and wildlife species associated with those lands.
 - Plant health should be re-inserted.

- **Page 2308, Subpart A – General Provisions, 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 this (i.e., potential wildfire fuel snags, leaning trees 30° (degrees) or more, deadwood on ground).

- **Page 2309, Subpart A – General Provisions, 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. Streams and riparian areas should also be specified. Include "other types of agricultural land used for or suitable for the production livestock."

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. 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."

- o Rewrite to "means any plant or wildlife species as determined by the State Conservationist, based on status as determined by state and federal wildlife agencies."

Recommendation:

- Revert to the language in the MOU with AFWA, NRCS and USFWS.
- Consult with State Tech Committees, State Wildlife Action Plans, USFWS for species of concern.
- This provides flexibility, so add species as necessary.
- **Non-industrial private forest land:**
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. An example is that some prairie soils can support some kinds of trees but the introduction of trees can fragment prairie landscapes and cause prairie species to move elsewhere or be at greater risk of predation than they would be if trees were absent.

Recommendation:

Include "...by the Secretary, that has existing tree cover or soils derived under trees or forest, or is suitable for growing trees; and..."

➤ **Page 2311, Subpart A – General Provisions, Sec. 1466.4 – National Priorities:**

Recommendation: At-risk species should continue to be 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.

Recommendation: Add 'forest health' and/or 'conserving and managing working forest landscapes for multiple values and uses, including fish and wildlife conservation' as an EQIP national priority.

- Congress, in the crafting of the 2008 Farm Bill clearly meant to elevate attention to forest land in EQIP and other Farm Bill programs. This is evident in the Farm Bill enacted into law as well as the Managers Report. Forest lands are increasingly important to society for lumber and other wood products as well as for carbon sequestration, energy and wildlife habitat. Very little private non-industrial forest land is managed with benefit of advice from a comprehensive management plan and mistakes in management can take decades or more to correct. Fish and wildlife needs should be addressed in all forest management plans. Our nation's forests are of strategic importance and deserving of national priority status in EQIP.

Recommendation: In (a) add **plant health**; it has been a National Priority in the past, we should formalize it in the rule.

- **Page 2313, Subpart B – Contracts and Payments, Sec. 1466.10 – Conservation Practices:** *The Joint Explanatory Statement of the Committee of Conference* states that “the Manager’s recognize that 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 are consistent with the purposes of EQIP.”

Recommendation: The EQIP Final Rule should clarify that EQIP can help producers through financial assistance for conservation practices to deter some predators – otherwise, many will not recognize this is an option. This will also help illuminate the intent that EQIP helps achieve the new pollinator emphasis in that conflicts associated with black bear often involve beehive/pollinator situations.

- Add language “...to deter predator species protected by the ESA of 1973, as well as other species at the State Tech Committee’s discretion.”

- **Page 2314, Subpart B – Applications for contracts and selecting applications, Sec. 1466.20**

- **Part (b):** We commend USDA for including the establishment of 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 must be kept in the final rule.
- **(b) (1) (iii):** Very important; critical to fish and wildlife conservation success – will help ensure that effective conservation measures are deployed to benefit the resource concern and not just deploy the cheapest practice without 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):** Priority funding should go to producers that will provide the most water saved (i.e., kept in groundwater/in-stream flow). Further, we believe that the final phrase “other than incidental land needed for efficient operations” should be stricken, as it is unnecessary [creates an unwanted loophole that hinders prioritization].

Recommendation: We recommend inserting the word “significant” before ‘reduction in water use’ and striking “other than incidental land needed for efficient operations” so that it reads: “Consistent with State law in which the producer’s eligible land is located, there is a significant 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.”

- **Part (b)(2)(ii):** This provision provides a loophole to water conservation, as it allows producers to bring more land into production if they are saving elsewhere, thus it creates a condition for net gain of production rather than conservation.

Recommendation: For these reasons, we recommend removing Part (b)(2)(ii).

- **Page 2314, Subpart B – Contracts and Payments, Sec. 1466.21 – Contract Requirements:**
 - **(2)(i):** We are pleased with the inclusion of this provision as it relates to preventing practices that would defeat the purposes of the program.

Recommendation: We encourage further clarification, stating specifically, there should not be implementation of practices that do not encourage or result in the degradation or conversion of native prairie, wetland, savanna, forest, streams and riparian areas 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.

- **Page 2314, Subpart B – Contracts and Payments, Sec. 1466.23 – Payment Rates:**
 - **(a)** after "designated conservationist" insert "with advice from the State Technical Committee and local working groups" [as stated in (b)].
- **Page 2315, Subpart B – Contracts and Payments, Sec. 1466.25 - Contract modifications and transfers of land:**
 - **(a)** Any modifications should be specifically consistent with and supportive of program purposes.

Recommendation: Reword the language in (a) to read "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..."

- **For program consistency and to ease burden on NRCS staff, modified contract must be re-ranked** to ensure that the modifications will not result in a score that falls below the State's threshold. We recommend that a new subsection be added here, but should remain tied to part (a) to avoid confusion.

Recommendation: Insert a new part (b), and move the current (b) – (e) into (c) – (f), with the following statement: "**(b) Should a contract modification result in a re-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.**"

- **Page 2315, Subpart C – General Administration, Sec. 1466.36 Environmental credits for conservation improvements.**

Recommendation: 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. **Replace 1466.36 of EQIP with this modification of HFRP language:**

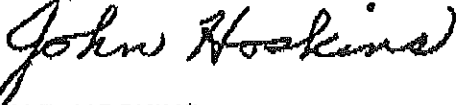
- "Environmental Services Credits for Conservation Improvements. USDA recognizes that environmental benefits will be achieved by implementing conservation practices, measures, and activities funded through HFRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an HFRP easement, contract, or restoration agreement. 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 an HFRP easement, contract, cost-share agreement, or restoration plan are met consistent with §§ 625.9 through 625.13 of this part. Where activities required under an environmental credit agreement may affect land

covered under an HFRP easement, restoration cost-share agreement, or contract, an amendment to the restoration agreement or contract, or a compatible use approval under an easement, may be required and participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such environmental credit agreements."

- **Insert "program purposes as well as"** between "that operation" (second sentence in EQIP Environmental Credits language).
- Definition of **compatible use** not in the EQIP rule and applies to easements; use "consistent with/to EQIP practices."

The Missouri Department of Conservation appreciates the opportunity for comment. If you require additional information, please contact Private Land Programs Supervisor, Bill White at 573-522-4115, Ext. 3512.

Sincerely,



JOHN D. HOSKINS
DIRECTOR

c: Mr. Bill White

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

MAY 11 2009

John D. Hoskins
Director
Missouri Department of Conservation
2901 West Truman Boulevard
Post Office Box 180
Jefferson City, Missouri 65102-0180

Dear Mr. Hoskins:

Thank you for your letter of April 16, 2009, in regard to Docket No. NRCS-IFR-08005, the Environmental Quality Incentives Program (EQIP) Interim Final Rule, as published in the *Federal Register*. The conservation provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) and the Administrative Procedures Act offer the public the opportunity to submit official comments on Agency regulations and other documents published in the *Federal Register* during the official public comment period indicated with each published regulatory document.

Regulatory changes generally are being published as interim final rules, enabling full implementation of the programs while public comment is assessed. NRCS acknowledges your letter of recommendation. Your comments will be analyzed and given full consideration in the process of moving to final program rules. The preamble for final rules will include our analysis of public comments and their disposition with regard to the final rules.

Again, thank you for your official comment. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. Christensen".

THOMAS W. CHRISTENSEN
Deputy Chief for Programs

cc:

Leslie Deavers, Acting Farm Bill Coordinator, NRCS, Washington, D.C.
Edward Brzostek, National EQIP Program Manager, Financial Assistance Programs
Division, NRCS, Washington, D.C.
Maggie Rhodes, Team Leader, Program Allocations and Management Support Team,
NRCS, Washington, D.C.

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THOMAS W. CHRISTENSEN
Deputy Chief for Programs

cc:

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