

FLAG



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March 12, 2003

Mr. Mark Berkland
Director, Conservation Operations Division
Natural Resources Conservation Service
U.S Department of Agriculture
1400 Independence Avenue SW, Room 5241
Washington, DC 20250-2890

Dear Mr. Berkland:

Re: Comments on Proposed Rule to on Environmental Quality
Incentives Program, 68 Fed. Reg. 7,755 (Feb. 10, 2003).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed rule to implement the provisions of Title II of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) revising and updating the Environmental Quality Incentives Program (EQIP). This proposed rule was published at 68 Fed. Reg. 6,655 (Feb. 10, 2003).

NFFC represents 35 grassroots farm and rural advocacy organizations in more than 30 states. Formed in 1986, the coalition coordinates the efforts of a growing network of grassroots organizations committed to preserving and enhancing a family farm food production system in the United States. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has a significant history of long-term interest in USDA's implementation of farm credit, disaster assistance, and conservation programs.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For over fifteen years, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in impact litigation, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit and farm program issues.

Proposed Definition for Limited Resource Farmers and Ranchers

NFFC proposes that there is a more accurate definition for "limited resource farmers and ranchers" than the NRCS's definition in proposed 7 C.F.R. § 1466.3. Instead, the definition should follow the language for Farm and Home Plan projections in 7 C.F.R. § 1951.25. Under this approach, in order to be considered a limited resource farmer or rancher, an applicant would have to show that after subtracting total farms debts and household living expenses, the income remaining would be 10 percent or less of the applicant's gross income for the previous year.

This language removes the arbitrariness within the current proposed definition, which compares all applicants' households to the national poverty level for a family of four, and the confusing income language used in it. In addition, the current gross sales language in the NRCS would exclude a producer with a 60-cow dairy herd in Wisconsin from the limited resource category, because the herd would produce approximately \$150,000 in gross sales per year. Yet, this producer is usually only barely breaking even in terms of annual net income and would qualify as a limited resource applicant under 7 C.F.R. § 1941.4

Additional Factor for Ranking EQIP Contracts

Proposed 7 C.F.R. § 1466.20 instructs State Conservationists or Designated Conservationists to rank all EQIP applications according to a list of six factors. NFFC suggests that the following factor be added to this list:

- (7) Give priority consideration, in the following order, to qualified applications from limited resource farmers and ranchers, socially disadvantaged farmers and ranchers (as defined by 7 U.S.C. § 2003(e)(2)), and beginning farmers and ranchers (as defined by 7 U.S.C. § 1999(a)) over all other qualified applications.

As it is used here, the term "priority consideration" means that qualified applications from individuals or groups of individuals from these groups would be brought to the "head of the line" when they are received by NRCS. It would be a strong incentive for "eligible producers with historically low participation rates" in USDA programs (see proposed 7 C.F.R. § 1466.7) to participate in EQIP. Furthermore, it signals a sincere NRCS commitment to ensure that these farmers and ranchers are not left out of the EQIP equation. Given that these farmers generally have smaller farms and ranches, it is unlikely that this incentive will significantly utilize EQIP funds to such an extent that other eligible applicants are prevented from receiving EQIP funds by including this factor in the ranking system's list.

Technical Assistance and Targeted Outreach for Limited Resource Farmers and Ranchers, Socially Disadvantaged Farmers and Ranchers, and Beginning Farmers and Ranchers

To further encourage and facilitate participation by limited resource farmers and ranchers, socially disadvantaged farmers and ranchers, and beginning farmers and ranchers in EQIP, the following changes to proposed 7 C.F.R. § 1466.8 (b)(5) are proposed (suggested language in italics):

(5) Supply information, as required by NRCS, to determine eligibility for the program, including information to verify the applicant's status as a limited resource farmer or rancher, *socially disadvantaged farmer or rancher*, or beginning farmer or rancher. *When NRCS identifies an applicant as a limited resource farmer or rancher, socially disadvantaged farmer or rancher, or beginning farmer or rancher it should ensure the applicant receives adequate technical assistance to accurately file an EQIP application, if needed or requested.*

Because of the additional economic and social barriers frequently faced by these farmers and ranchers and their often justified suspicions—as highlighted by *Pigford v. Veneman*—of their treatment by USDA programs, NRCS should take special steps to ensure that applicants from these groups participate in EQIP. Much like the proposed priority consideration, a guarantee of adequate technical assistance for EQIP applications is another strong incentive to encourage eligible producers from these groups to seek an EQIP contract.

NFFC applauds and supports the proposed language for 7 C.F.R. § 1466.7 concerning outreach activities for EQIP, but proposes the following amended language (suggested language in italics):

Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource *farmers and ranchers, socially disadvantaged farmers and ranchers, beginning farmers and ranchers*, small-scale producers, Indian Tribes, Alaska Natives, and Pacific Islanders.

The addition of these terms to the special outreach activities for EQIP would conform this section to the general use of the phrase "limited resource farmers and ranchers" throughout the proposed rules, and would include those groups whose needs and circumstances are consistent with the focus of the proposed special outreach activities.

Encouraging and facilitating participation by farmers and ranchers from these groups through priority consideration, technical assistance, and targeted outreach efforts not only benefits them, but will also aid NRCS achieve the EQIP goal of enhancing the environmental quality of United States farmland.

A Tiered System for EQIP Cost-Share Payments

7 U.S.C. § 1240B(d)(1) states that EQIP cost-share payments received by an eligible must not be greater than 75 percent of the cost of the approved EQIP project, except in the case of limited resource and beginning farmers and ranchers who may be reimbursed up to 90 percent for eligible reimbursable costs. The 2002 Farm Bill also sets a new \$450,000 limitation for aggregated EQIP payments between 2002 and 2007. 7 U.S.C. § 240B(d)(1).

The 2002 Farm Bill does not require NRCS to pay 75 percent of qualified cost-share projects. The Farm Bill's language leaves room for NRCS to create a tiered EQIP cost-share system similar in design and specifics to the Emergency Conservation Program (CSP) cost-share system described in 7 C.F.R. § 701.51(b). In the CSP program, a participant will receive no more than 64 percent of the first \$62,500 of eligible reimbursable costs, 40 percent of the second \$62,500 of eligible reimbursable costs, and after that 20 percent of eligible reimbursable costs up to the CSP payment limitations of \$200,000.

The CSP program recognizes that applicants who pursue projects that approach the payment limitation level are more likely to be capable of shouldering a greater burden in the cost-share system, and should do so. Consequently, NFFC encourages NRCS to develop a tiered cost-share payment system for EQIP along the lines of the sliding scale approach taken in CSP.

A sliding scale cost-share payment scheme for EQIP that follows the CSP model might look like the following:

1. For eligible reimbursable costs up to \$50,000, EQIP will provide a 75 percent cost-share payment.
2. For eligible reimbursable costs between \$50,001 and \$100,000, EQIP will provide a 60 percent cost-share payment.
3. For eligible reimbursable costs between \$100,001 and \$200,000, EQIP will provide a 40 percent cost-share payment.
4. For all eligible reimbursable costs over \$200,001, EQIP will provide a 20 percent cost-share payment up to the maximum \$450,000 aggregate payment limitation.

Limited resource farmers and ranchers would be exempt from this proposed sliding scale. As a result, they would be eligible to receive up to a 90 percent cost-share payment for all eligible reimbursable costs.

USDA Reporting Requirements

NFFC proposes adding new language in 7 C.F.R. § 1466.5 to direct that all information about EQIP spending and practices be reported by farm, not by contract. Reporting by contract will prevent the public from knowing how much total funding was received by

Mr. Mark Berkland
Page 5
March 12, 2003

an operation and for what practices the money was spent. The historical method of reporting by EQIP contracts ignores the fact that a single farm operation can have multiple EQIP contracts and that in turn may distort and mischaracterize the size of EQIP payments to individual operations.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Carl L. Flink

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cc: Kathy Ozer, Executive Director, National Family Farm Coalition