

National Sustainable Agriculture Coalition

February 13, 2009

Mr. Matt Harrington
National Environmental Coordinator
Natural Resources Conservation Service
Ecological Sciences Division
1400 Independence Ave., SW
Washington DC 20250
Submitted by E-mail to: NEPA2008@wdc.usda.gov

RE: EQIP Interim Final Rule // FR Environmental Assessment and FONSI, 74 Fed. Reg. 2293 (Jan. 15, 2009).

Dear Mr. Harrington:

I am submitting these comments, on behalf of the National Sustainable Agriculture Coalition (NSAC), on the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Interim Final Rule for the Environmental Quality Incentives Program. NSAC represents family farm, rural, and conservation organizations from around the U.S. that share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities

NATIONAL SUSTAINABLE AGRICULTURE COALITION COMMENTS

1. The EA/FONSI is legally inadequate under the National Environmental Policy Act (NEPA) because NRCS has no authority to implement two of the three alternatives.

The EA/FONSI purports to provide three “alternatives” for NRCS action in implementing the EQIP as provided in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). These alternatives are (1) No Action – Not Implementing EQIP; (2) No Action - 2002 EQIP Requirements and (3) Agency Preferred Alternative - 2008 EQIP Requirements. NRCS, however, has no legal authority to undertake Alternatives (1) and (2). Therefore, the EA/FONSI is totally inadequate because NRCS has not undertaken an analysis of reasonable alternative actions within the agency’s discretion to implement EQIP as provided in the 2008 Farm Bill, the analysis required under NEPA Section 102(C).¹

2. The EA-FONSI for the EQIP final rule is legally deficient because it does not provide any analysis of the environmental impacts which are likely to arise from implementation of the EQIP Interim Final Rule.

The EA at p. 9 states that because the EA is a “programmatic EA,” it will contain no information on “. . . site-specific or “ground-disturbing actions” that will result from implementation of the EQIP IFR. The result is an EA that provides “qualitative statements” -- which are essentially bald-faced conclusions unsupported by any data or analysis of how EQIP has actually been implemented to date or any attempt to address the on-the-ground, real environmental effects arising from EQIP implementation under the 2008

¹ 42 U.S.C.A. § 4332(C).

Farm Bill. An example is provided at p. 49 of the EA in the discussion of the impacts of EQIP implementation on water resources. The EA states there would be no direct impacts to surface water quality, ground water, wetlands, or floodplains associated with the implementation of EQIP. There is absolutely no concrete information provided to support that conclusion. The EA relies instead on statements of the general effects of conservation practices as summarized in NRCS Handbooks.

Instead of producing a legally adequate programmatic environmental review of EQIP's environmental impacts, NRCS states at p. 9 of the EA that any environmental impacts from EQIP-funded "site specific actions" will be reviewed at the NRCS State or local offices using the NRCS environmental evaluation process. Under the environmental evaluation process, NRCS staff at the state and local level undertake environmental evaluation on a case-by-case basis using Form NRCS-CPA-52, which provides a one-page "Environmental Evaluation Worksheet." In many cases, this worksheet may be filled out by a farmer and a technical service provider who has no training in environmental evaluation. More importantly, these NRCS Environmental Evaluation Worksheets are not available to policy decisionmakers, people in the local community or any one else outside of NRCS.

Clearly, file cabinets or computer files full of cursory environmental evaluation forms for EQIP funded contracts, which are not subject to any public oversight, are not a legally adequate substitute for a Programmatic Environmental Assessment that takes into account the environmental impacts from actions arising from EQIP implementation.

3. The EA is legally inadequate under NEPA because NRCS has failed to undertake and make public an analysis of actions funded or likely to be funded by EQIP which may cumulatively have an adverse environmental impact on the environment.

NEPA requires that an analysis of environmental impacts of an action include analysis of cumulative impacts. Cumulative impacts are defined in the NEPA regulation as impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.²

USDA's own NEPA regulations provide that in determining whether an action will have a significant impact, the agency must consider whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary *or by breaking it down into small component parts*.³

The EQIP EA/FONSI makes no attempt to analyze the cumulative impact of EQIP-funded actions. A clear example of this is the failure of NRCS to address the past and likely future funding of hundreds of new and expanding concentrated animal feeding operations (CAFOs) with millions of EQIP dollars. A search of the EA reveals only one reference to CAFOs at p. 46, which provides:

"Concentrated Animal Feeding Operations (CAFO)

CAFOs have a unique set of water quality challenges associated with them. The CAFO environment by definition accumulates not only animals but the waste products of animals. Conservation practices and measures through a number of programs are focused

² 40 C.F.R. § 1508.27.

³ 7 C.F.R. § 650.4(k).

on how to ensure water quality is not effected by animal waste or operation of a CAFO. Plans are designed to help aid in the timing, placement and distribution of animal waste. Typically these are known as Comprehensive Nutrient Management Plans.”

Although USDA has consistently refused since 2003 to provide adequate aggregated data on EQIP funding for CAFOs or any adequate information on the performance of new or expanded CAFOs funded by EQIP, a number of organizations have gathered some information on CAFO funding. Even this partial information indicates any environmental review of EQIP implementation is inadequate without a full assessment of the cumulative environmental impacts of CAFO funding.

One significant report, entitled *Industrial Livestock at the Taxpayer Trough: How Large Hog and Dairy Operations Are Subsidized by the Environmental Quality Incentives Program*, was prepared by Elanor Stamer for the Campaign for Family Farms and the Environment and released in December 2008.⁴ This report shows that from 2003 through 2007, on a national basis, roughly 1,000 industrial hog and dairy operations received \$35 million annually in EQIP funding. These operations, including hog operations with over 2,000 head each, made up less than 11 percent of all swine operations nationally, but received an estimated 37 percent of EQIP contracts in the hog sector. And industrial dairies with over 500 head made up only 3.9 percent of all milking operations, but received an estimated 54 percent of all EQIP dairy contracts. The report also found that in Sioux County, Iowa between 2003 and 2006, NRCS approved 55 hog waste storage contracts totaling \$2,682,528 and in Plymouth County, Iowa NRCS made \$1.43 million in payments to 29 hog producers. Despite the large amounts of funding and the potential increase in the overall water pollution burden from the proliferation of CAFOs and the establishment of waste lagoons containing millions of gallons of hog waste in these counties, NRCS conducted no publicly available environmental review at the state or local level.

Another report prepared by the Union of Concerned Scientists, entitled *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations*, found that overall EQIP CAFO subsidies for the past several years were likely to have totaled about \$100 million or more per year.⁵ This figure is a rough estimate because NRCS has to date refused to provide any adequate information on how much EQIP funding has aided the proliferation of CAFOs and any data on the overall environmental performance of these EQIP-funded operations.

The 2008 Farm Bill gives NRCS the discretion to provide EQIP payments of up to \$450,000 and to provide payments to large-scale concentrated animal feeding operations (CAFOs). Many of the animal waste facilities potentially funded by EQIP, such as waste lagoons, have been identified as sources of environmental water and air pollution. In addition, the expansion of CAFOs within a watershed increases the risk of cumulative adverse effects from the land application of increasing amounts of animal manure and other wastes. NRCS has the discretion to limit or even prohibit payments to new or expanding CAFOs, or to prohibit payments for CAFOs sited in floodplains. In the EA/FONSI, NRCS ignores the ancillary adverse effects of the subsidization and expansion of CAFOs using EQIP funds.

NSAC urges NRCS to undertake a rigorous review of the environmental impacts of the use of EQIP funds on the expansion of CAFOs. This review should include the alternative action of using EQIP funds for more sustainable grazing and pasture-based systems that reduce the risks of catastrophic spills and other environmental impacts.

⁴ A copy of this report is available on the web at http://www.landstewardshipproject.org/pdf/eqip_report_12-08.pdf.

⁵ A copy of this report is posted on the web at http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf.

In addition, other practices funded by EQIP have adverse impacts on the environment. For example, irrigation infrastructure funded by EQIP can be used to deplete water resources needed by wildlife. EQIP funds have been used to convert environmentally valuable shallow wetlands into deepwater irrigation ponds. NRCS should undertake a thorough analysis of EQIP funding of conservation practices with ancillary adverse impacts on the wildlife, with a focus on cumulative impacts on national, state and local natural resources.

From 2003 to 2008, NRCS implemented a number of new conservation practice standards for costly technology, such as standards for animal waste digesters and irrigation engines. An adequate environmental review of EQIP should include an analysis of the costs and benefits of this technology to provide the agency, Congress, other decisionmakers and the public with adequate information to determine whether NRCS should continue to fund such practices. These costly practices should be compared with costs and benefits of less costly agricultural systems and practices. This analysis should also include both the short-term cost of purchasing and installing the technology and the long-term costs of maintaining and operating the equipment and facilities.

NSAC urges NRCS to aggregate EQIP data in an adequate Environmental Impact Statement for EQIP implementation that provides useful and timely information to policy decision makers and the public about the cumulative environmental impacts arising from the use of EQIP funds.

Sincerely,

Martha L. Noble

Martha L. Noble
NSAC Senior Policy Associate