National Sustainable Agriculture Coalition

April 17, 2009

Mr. Greg Johnson
Financial Assistance Programs Division
USDA Natural Resources Conservation Service
Room 5237
P.O. Box 2890
Washington, DC 20013-2890

Submitted by email to http://regulations.gov

RE: Docket Number NRCS-IFR-08005 // Comments on Environmental Quality Incentives Program Interim Final Rule, 74 Fed. Reg. 2293 (Jan. 15, 2009) and 74 Fed. Reg. 10674 (March 12, 2009).

Dear Mr. Johnson:

I am submitting these comments on behalf of the National Sustainable Agriculture Coalition (NSAC) on the Environmental Quality Incentives Program (EQIP) Interim Final Rule (IFR). 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. Many of our member organizations participate on NRCS State Technical Committees and many of their individual members are enrolled in NRCS conservation programs including EQIP. A list of member organizations represented by NSAC is appended to these comments.

NATIONAL SUSTAINABLE AGRICULTURE COMMENTS

Earlier this year, NSAC delivered a letter to then Acting NRCS Chief Dave White and key USDA officials in USDA Secretary Vilsack's office with our recommendation for additional guidance for NRCS State Conservationists on six key issues, prior to issuance of an EQIP final rule later this year. These key points - incorporated and expanded as the first 6 recommendations in these comments on the EQIP IFR - will more fully implement EQIP to match 2008 Farm Bill requirements and key points in the agricultural platform of President Obama. We have additional recommendations that could improve the implementation of EQIP to better serve sustainable and organic farmers and ranchers and improve the overall environment and health of our rural communities.

1. ADD THE NEW EQIP NATIONAL PRIORITIES PROVIDED IN THE 2008 FARM BILL TO THE EQIP FINAL RULE.

NSAC recommends that the IFR § 1466.4 be revised in the EQIP final rule to include the new national priorities explicitly added by Section 2502 of the Food, Conservation, and

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Energy Act of 2008 (2008 Farm Bill). These new priorities include *energy conservation, organic systems, and forest management*. These 2008 Farm Bill priorities – *plus enhancing soil quality and climate change mitigation* – should 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 § 1466.4(a) of the IFR.

The congressional debate over the 2008 Farm Bill included particular attention to organic farming, energy conservation, and forest management. These three purposes were the expressly included as new statutory purposes for EQIP. It is surprising to see these statutory changes go unheeded in the rulemaking process and we urge that this oversight be rectified immediately, through guidance to the state and county offices, and in the final rule.

In addition, the new Administration has made a commitment to addressing climate change. Soil quality enhancement, including the important role of carbon sequestration in improving soil quality, is an important tool for agriculture to decrease its carbon footprint and should be included in the mix of EQIP national priorities. As discussed in detail below in Section 7 of these comments, NSAC urges NRCS to promote organic farming systems to enhance significantly the level of carbon sequestration in the U.S. farming system.

2. EQIP PAYMENT PROVISIONS

a. Issue guidance to the effect that policy for granting waivers of the $300,000 payment limit to allow payments of up to $450,000, provided for in EQIP IFR § 1466.21, is under economic and environmental review, and that while the review is ongoing, there will be a moratorium on any contracts exceeding $300,000.

b. Commence an economic and environmental analysis and evaluation, including cumulative impacts on watersheds, aquifers and other eco-regions of waste lagoons, methane digesters, center pivots, and any other particular practice or technology that may have received relatively large annual or multiyear payments in EQIP contracts in the past.

We urge NRCS to adopt a moratorium on payment limit waivers until a thorough analysis can be completed to determine from an economic and environmental viewpoint whether waivers for high-cost systems 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. To date, NRCS has failed to provide an adequate environmental assessment of the cumulative impacts of these technologies, even though the agency now has over 10 years of information on EQIP implementation. It appears that the agency continues to view each EQIP contract in isolation with little or no regard for the cumulative impacts of funding scores of contracts for large-scale concentration animal feeding operations (CAFOs), center pivot irrigation or other technology that taken as whole can have profound adverse effects on resource concerns in a given state or region.

A thorough review is called for so that fully vetted criteria for approving possible waivers in the future can be developed. We are especially concerned that NRCS join with other USDA agencies in undertaking a thorough environmental review of the total net environmental impacts of CAFOs with methane digesters. To date, most analyses of digesters role in GHG emissions focus solely on relatively modest decreases in net CAFO methane emissions, often without accounting for the additional methane generated in CAFO waste handling and holding systems. Moreover, the analysis also ignores the GHG emissions from the conversion of grassland or pasture to provide feed grains to confined animals,

including increased of emissions of the potent greenhouse gas nitrous oxide generated through the production and use of synthetic fertilizers.

In addition, methane digesters are often touted as a silver bullet for CAFO pollution problems – but digesters do nothing to reduce phosphorus levels in CAFO waste – indeed digesters may concentrate significant pollutants in post-digestion waste streams, making their handling and disposal more difficult. These are the type of issues that should be part of a more thorough environmental and economic analysis than has been conducted to date.

c. NSAC recommends that NRCS eliminate the requirement from EQIP IFR § 1466.21(d) that an EQIP contract eligible for the "special environmental significance" waiver must be for a project that assists the participant in complying with federal, state and local regulatory requirements.

This criterion, provided by § 1466.21(d)(3) is not required by the 2008 Farm Bill or the Managers Statement on the waiver, which refers only to projects involving "innovative technologies" and projects resulting in significant environmental improvement. In addition, the criteria for the waiver in § 1466.21 also includes a waiver for projects addressing national priorities. For 2009, NRCS national priorities already include assisting producers to comply with regulations for point source water pollution and air pollution regulations – thus giving these projects a double score in the waiver criteria.

The inclusion of the criterion for meeting federal, state and local regulatory requirements would preclude applying the waiver to projects such as those that address unregulated non-point source agricultural pollution, result in significant on-farm energy savings, result in high levels of water conservation or increased instream flow and a host of other projects that could provide significant environmental improvement without being necessary to meet regulatory requirements.

In addition, a major statutory purpose of EQIP is *to avoid* the need for resource and regulatory programs by assisting producers in protecting soil, water, air and related natural resources and meeting environmental quality criteria established by federal, state, tribal and local agencies. This purpose would be thwarted if the EQIP payment limit waiver applies only to applicants from producers whose operations, for example large-scale CAFOs, are designed and operated in a manner to subject them to regulatory regimes.

NRCS recommends that the waiver provision criterion be limited to applications for projects that can provide significant improvements to priority resource concerns, without limiting waivers to agricultural producers whose operations produce sufficient off-farm pollution and other environmental and public health hazards sufficient to require regulatory measures.

d. NSAC recommends that NRCS give a low priority to joint operations whose participants seek multiple EQIP contracts which total more than $150,000 for the joint operation and restrict overall funding for joint operations to the same $300,000 limit as that for individuals and entities.

e. NSAC further recommends that EQIP IFR § 1466.20(5) be amended to provide that any EQIP funding for a joint operation with multiple EQIP contracts greater than $150,000 and up to $300,000 be subject to approval by the appropriate NRCS Regional Assistant Chief, on the same footing as single EQIP contracts.

On March 12, 2009, NRCS issued a correction to the EQIP IFR which removed "joint operations" from the payment limitations of EQIP IFR § 1466.24.[1] The notice states that the $300,000 EQIP payment limit provided in the 2008 Farm Bill applies to persons and legal entities but not to joint operations. This leaves the EQIP IFR with no funding cap on joint operations and implies that joint operations may receive multiple EQIP contracts that total more than $300,000.

There is, however, no statutory prohibition preventing NRCS as a matter of sound public policy from establishing an administrative cap of $300,000 on total funding for a joint operation and subjecting joint operations to the same administrative review as individual EQIP contracts under EQIP IFR § 1466.20(5) or any other EQIP measures. In addition, we recommend that NRCS give a low priority and close scrutiny to applications for a joint operation with multiple contracts totaling $150,000 or more. These measures will help ensure that EQIP funds reach more farmers and ranchers over a wide geographic area rather than concentrating EQIP funding in the hands of a few individual or entities seeking large EQIP subsidies to underwrite expansion of already large agricultural operations.

f. EQIP payments for income forgone should not be made for conservation practices intended to bring the producer into compliance with a federal, state or local regulatory program.

The 2008 Farm Bill authorizes USDA to provide EQIP payments for up to 100 percent of income foregone. EQIP IFR § 1466.3 defines "Estimated Income Foregone" as an estimate of the net income loss associated with the adoption of a conservation practice, including from a change in land use or land taken out of production or ***the opportunity cost associated with the adoption of a conservation practice.*** EQIP IFR § 1466.23 (c)(iv) includes a list of conservation practices for which State Conservationists may give a higher priority in determining payments for income foregone. This list includes nutrient management, air quality management, and animal carcass management, all of which are practices that agricultural producers may be required to undertake to meet the requirements of federal, state or local environmental regulations.

NSAC recommends that payments for income foregone should not be made for conservation practices that agricultural producers undertake to meet regulatory requirements. The agricultural producer must meet these requirements in order to comply with the law. Therefore, implementation of these conservation practices does not meet the definition of "an opportunity cost associated with the adoption of a conservation practice." The producer does not have the option to avoid the cost of complying with law.

g. Amend EQIP IFR § 1466.23 to include a priority for income foregone payments to applications for transition to organic production.

Conservation practices related to the transition of agricultural fields or herds to organic production fall squarely within the category of income foregone. During the transition period, farmers and ranchers may see a temporary fall in production levels as new practices are implemented. In addition, because the farmers and ranchers are not yet organically certified under the National Organic Program, they cannot sell their products into the market for organic products. Farmers and ranchers voluntarily decide whether to make the transition to organic production and seek organic certification and income foregone can be measured by their operation's previous income or by comparison with average income for similar operations in the region.

[1] Environmental Quality Incentives Program Correction, 74 Fed. Reg. at 10674-10675 (March 12, 2009)(amending EQIP IFR Section 1466.24).

3. EQIP SUBSIDIES FOR CONCENTRATE ANIMAL FEEDING OPERATIONS (CAFOS)

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

A legally adequate NEPA review of EQIP funding for large-scale CAFOs, which accounts for the cumulative impact of EQIP funding for CAFOs, is long overdue. Based on such a review, a decision then could be considered to reinstate through administrative 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.

NRCS to date has done no rigorous environmental assessment of the ***net impact*** of billions of dollars of funding to expand CAFOs. Despite a growing body of research and increasing numbers of lawsuits and legal orders directed at CAFOs around the nation, NRCS continues to underwrite the expansion of these industrialized operations even in regions where CAFOs significantly contribute to water and air quality impairments. An example is provided in the state of Oklahoma where EQIP funding has been used to underwrite CAFO expansion. The state's Attorney General has sued the poultry industry claiming that over-application of poultry CAFO waste is polluting the city of Tulsa's drinking water resources.[2] But even in the face of this lawsuit, the NRCS State Conservationist in Oklahoma responded to complaints of the CAFO sector that not enough EQIP funds were available to CAFOs. The complaints arose because the CAFO sector did not have sufficient muscle in individual communities to garner special funding priorities at the local level. Beginning in 2006, the State Conservationist set aside EQIP funds to ensure that both existing ***and expanding*** swine, beef and dairy CAFOs statewide could receive funding. This EQIP funding to expand CAFOs in Oklahoma continues in 2009.[3]

In many states, EQIP funds are used to underwrite the transportation of poultry litter away from areas with high concentrations of CAFOs.[4] An example is the NRCS EQIP-funded Poultry Litter Redistribution Program established in Alabama in 2004 to pay for the transportation of poultry litter out of nutrient saturated areas. But there is no limit on new or expanding CAFOs in these nutrient-saturated areas. Without such a limitation on expansion, the program ultimately provides a public funding stream that facilitates locating even more poultry CAFOs in watersheds overburdened with high levels of nutrient pollution. Using poultry litter to replace synthetic fertilizer may have some merits, but according to a consultant on Alabama poultry waste, most of the poultry litter is applied to fields based on its nitrogen content which can lead to buildup of soil phosphorus from the litter and increase the risk of phosphorus runoff. The consultant also noted that rules for limiting poultry litter application in winter and wet weather, applying the litter according to nutrient management plans, and for covering store litter are not

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[2] The case, *State of Oklahoma v. Tyson Foods, Inc. (N.D. Okla, No. 4:05-cv¬0032)(complaint, filed June 13, 2005*), is still pending. The Oklahoma Attorney General, asserts various claims based on pollution from the waste of 14 poultry operations in the Illinois River Watershed.

[3] See Oklahoma Statewide AFO/CAFO Animal Waste Management - FY 2009 at http://www.ok.nrcs.usda.gov/programs/stwide09/AFOCAFO09.html.

[4] See L. M. Risse et al., Protecting Water Quality with Incentives for Litter Transfer in Georgia (Cooperative Services Working Paper #2008-01, Sept. 2008)(available at http://www.h2opolicycenter.org/pdf_documents/Coop_Services_WP2008/Coop_Services_Series_WP2008-001.pdf).

strictly enforced.[5] Without these safeguards, transporting poultry litter can ultimately result in transferring CAFO water pollution problems to other areas in the state.

The public is also entitled to know from NRCS how much EQIP funding has gone to CAFOs which have subsequently been found to violate federal, state or local environmental regulations or have been found to be private nuisances. Not only is this information not made available, but since the passage of the 2002 Farm Bill NSAC and other organizations have been repeatedly frustrated in attempts to gain access to even basic, anonymous data on the number of CAFOs funded by EQIP, the size of contracts, the type of practices funded, and other pertinent information that should be part of the public record but which has been largely hidden from public view for the past six years. A recent report by the General Accountability Office concluded that neither the U.S. Environmental Protection Agency nor USDA had comprehensive information on the location and environmental impacts of large-scale CAFOs, even after decades of CAFO regulations and subsidies to CAFO from EQIP and other USDA programs.[6] We trust that an Administration that is committed to transparency will rectify this problem.

In the meantime, it should be abundantly clear that NRCS should cease and desist from providing EQIP 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. For example, a 2008 study conducted for the Campaign for Family Farms and the Environment looked at the limited data that is publicly available to investigate the use of EQIP by industrial hog and dairy operations. The study found that these operations receive far more than their fair share of EQIP funding. Although industrial hog operations comprise only 10.7% of all hog operations nationally, they received an estimated 37% of all EQIP contracts to the hog sector. In contrast, mid-sized hog farms represent roughly 15% of all operations but receive only 5.4% of EQIP hog contracts. Similarly, the report found that industrial dairies make up only 3.9% of all dairy operations nationally, yet they receive an estimated 54% of all EQIP dairy contracts. Meanwhile, mid-sized dairies, which account for 13% of all dairies nationally, receive only 7% of EQIP dairy contracts. The report estimates that between 2003 and 2007, roughly 1,000 industrial hog and dairy operations have captured at least $35 million per year in funding through the EQIP program.[7]

NSAC urges NRCS to issue guidance to prohibit funding to new and expanding CAFOs to send a clear message that, consistent with the President's strong 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. In addition to guidance for 2009, the EQIP IFR should be amended in the final rule to clearly prohibit EQIP funding to new or expanding CAFOs.

b. Undertake a comprehensive assessment of all public health and environmental impacts related to CAFO production practices and CAFO waste streams and the role of EQIP funding in increasing and compounding these impacts.

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[5] Alabama Cooperative Extension, An Update for Alabama CAWVs [Certified Animal Waste Vendors] and Others Involved in Waste Management (Summer 2007).

[6] General Accountability Office, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern.* Report No. GAO-08-944. (Sept. 4, 2008)(posted at http://www.gao.gov/new.items/d08944.pdf).

[7] ELANOR STARMER, INDUSTRIAL LIVESTOCK AT THE TAXPAYER TROUGH: HOW LARGE HOG AND DAIRY OPERATIONS ARE SUBSIDIZED BY THE ENVIRONMENTAL QUALITY INCENTIVES PROGRAM (2008)(posted on the web at http://www.iowacci.org/news/EQIP%20report%2012-08.pdf).

While using EQIP funding to underwrite the CAFO industry, NRCS has virtually ignored significant public health and environmental impacts from CAFO production practices and CAFO wastestreams. For example, NRCS has undertaken no adequate assessment whatsoever of the potential threats posed by the use of massive amounts of antibiotics in the CAFO sector, including antibiotics important to human health. CAFO antibiotic use not only results in antibiotic pollution, it also results in the development of antibiotic resistant pathogens which are released to the air and water.[8]

NRCS has also ignored the serious issue of arsenic pollution from poultry CAFO litter. In the Chesapeake Bay region's Delmarva Peninsula, over 600 million broiler chickens are raised each year, with the generation of about 1 billion kg of poultry CAFO waste. Both EQIP funding and state funds have subsidized the transport of some of this waste away from areas with high levels of soil nutrients to other areas in the region. Researchers at Johns Hopkins University have identified arsenic in poultry litter as a particular pollutant of concern. Arsenicals are added to poultry feed to prevent parasitic infections and promote growth. Most of the arsenic is excreted by the birds and much of the arsenic in the poultry litter is in a form that can be readily leached from soil and move into groundwater. Arsenic can also be taken up from the soil by many plants. Arsenic is recognized as a human health threat associated with a wide array of diseases and with human birth defects.[9] In the long run, EQIP-funded poultry litter transportation could result in spreading arsenic contamination from poultry producing areas to land throughout the region.

In January 2004, the American Public Health Association called for a precautionary moratorium on the construction of new CAFOs until more research is completed regarding their impacts on public health. The Association also called for federal and state governments to initiate and support research on the air pollutants, water and soil emissions, as well as investigate the greater vulnerability of infants and children to such pollutants.[10] In 2008, the Pew Commission on Industrial Farm Animal Production released the report *Putting Meat on the Table: Industrial Farm Animal Production in America* which provides a comprehensive overview of the environmental and public health hazards posed by large-scale industrialized CAFOs.[11] Among other recommendations, the report called for the phase-out of the subtherapeutic use of antimicrobials in CAFOs. Despite directing millions of dollars of funding each year to expand CAFOs and spread CAFO waste across the countryside, NRCS has yet to address adequately the environmental and public health threats from CAFOs.

4. ORGANIC CONVERSION AND ORGANIC PRODUCTION

The EQIP IFR completely misses the mark on organic conversion and many aspects of the 2008 Farm Bill's provision for organic production. NSAC has recommended already to USDA that for 2009 and for early planning for 2010 it is critical that the recommendations for the EQIP final rule also go out to state

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[8] See e.g. H.C. Wegener HC. *Antibiotics in animal feed and their role in resistance development.* 6 Current Opinion in Microbiology 439-445 (2003); Amy R. Sapkota et al., *Antibiotic-resistant Enterococci and Fecal Indicators in Surface Water and Groundwater Impacted by a Concentrated Swine Feeding Operation* Environmental Health Perspectives (2007);

[9] Keeve E. Nachman, Jay P. Graham, Lance B. Price, & Ellen K. Silbergeld, *Arsenic: A Roadblock to Potential Animal Waste Management Solutions*, 113 Environmental Health Perspectives 1123-1124 (Sept. 2005).

[10] American Public Health Association, Precautionary Moratorium on New Concentrated Animal Feed Operations, http://www.apha.org/legislative/policy/2003/2003-007.pdf January, 2004

[11] PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA (2008) (posted on the web at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Industrial_Agriculture/PCIFAP_FINAL.pdf).

and district NRCS offices in the form of directives and other guidance. NSAC makes the following recommendations, in addition to recommendations for organic conversion and production made in other sections of these comments.

a. Clarify in the EQIP final rule, and issue an immediate directive to NRCS State Conservationists, that the $80,000 limitation 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.

Both the plain language of the 2008 Farm Bill and its legislative history overwhelmingly show that the special $20,000 a year/$80,000 six-year limit on the special EQIP provision for organic conversion assistance, in which new fields or herds are transitioning to organic production is not intended to be a payment limit for organic producers seeking basic EQIP assistance on already certified organic acreage or systems.

The eligibility requirements for the organic conversion provision specifically refer to producers who agree " . . . to develop and carry out an organic system plan or to develop and implement conservation practices for certified organic production that are consistent with an organic system plan and the purposes of this chapter." In addition, the provision also excludes payments for costs for organic certification. This language indicates that the provision is targeted to the farmers and ranchers who are transitioning agricultural fields or livestock and poultry production to organic production. The whole rationale for a lower limit for organic transitioning was to find a balance between encouraging conversions while not raising the incentive so high that it overwhelmed the organic marketplace. In addition, the Managers Statement (at p. 726) refers specifically *to the special needs of organic transitioning* to " . . . additional acres or animal herds" as a special management-intensive activity.

EQIP IFR § 1466.24(c) is clearly erroneous and not authorized by the 2008 Farm Bill in that it applies the payment limits for organic conversion to all organic producers – *including those who are already certified.* The section should be amended to apply this payment limit only to payments for organic conversion. An immediate clarification from NRCS Headquarters will help ensure there is not confusion on this point at the state and local implementation level. Organic producers with existing certified organic acreage and operations and certified organic animal herds should be able to obtain EQIP funding to improve their overall conservation performance on an equal footing with conventional producers.

b. In the EQIP final rule provide that (i) all states and all counties must make the organic conversion practice available to producers in the state and county and that (ii) organic conversion proposals are to be ranked and processed as a separate subcategory (ranking pool) within the program.

c. Provide in the EQIP final rule and in EQIP program manuals and documents measures to ensure that organic conversion assistance may be implemented through a special organic conversion "practice" standard with its own special practice code (as is the case for the Agricultural Management Assistance 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). In addition, require that the EQIP organic conversion practice or system must include an organic system plan developed under the National Organic Program.

d. Require that NRCS state offices 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. This measure should also be part of regulations and guidance for the NRCS Technical Service Provider regulations.

e. Provide in the EQIP final rule 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.

f. Issue guidance urging state offices to do additional education and outreach on organic conversion. Not only is organic conversion a new purpose of EQIP but in addition the 2008 Farm Bill includes a specific directive for new outreach to specialty crop and organic producers. Enter into NRCS cooperative agreements with organic certifying organizations and other organizations with demonstrated experience in working with organic farmers and ranchers to assist with efforts for such education and outreach.

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 organic producers and existing organic producers who are converting new fields or herds to organic production 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 a clear EQIP final rule and additional 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 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 available for 2009 that would be ideal, but assuming it is not, we urge that NRCS clarify the available options for NRCS 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 NRCS Headquarters to the states will be critical to jump start this process.

5. SELECT REGIONALLY-BASED PRIORITY RESOURCES CONCERNS

a. Bring EQIP and the Conservation Stewardship Program (CSP) into alignment to improve the efficiency and effectiveness of conservation assistance by providing in the EQIP final rule and the CSP IFR and final rule that for EQIP and CSP, each watershed or eco-region within the state should have designated up to 5 specific resources concerns.

b. Establish these selected specific resource concerns as priorities when allocating EQIP resources according to § 1466.4(b)(2) and § 1466.6 and when ranking EQIP applications with respect to ranking criteria (b)(1)(ii) and (iii) in § 1466.20 of the IFR. In addition, promote the use of EQIP to help participants achieve a level of conservation performance which will aid their ability to meet the higher environmental thresholds of CSP.

c. 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 the higher standards and 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.

Therefore, we urge you to both issue guidance that will bring the selection of resource concern priorities for the two programs together and to provide for this coordination of EQIP and CSP resource concerns in the interim and final regulations for both programs. The CSP statute provides 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 that NRCS should direct 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

a. Issue guidance to clarify that EQIP financial assistance may now be made, as provided in the 2008 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 EQIP IFR only references CNMPs, but fails to mention

comprehensive conservation planning assistance for everyone else. In addition to immediate guidance, this oversight should also be rectified in the final rule).

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

c. Encourage state and county offices to encourage producers who express an interest in CSP, but who may not be qualified to enroll in CSP, 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 EQIP 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
- 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. We urge that this specific option be included in the EQIP final rule.

7. NSAC COMMENTS OF THE USE OF EQIP WITH REGARD TO RENEWABLE ENERGY PRODUCTION, ENERGY CONSERVATION, CLIMATE CHANGE MITIGATION AND ADAPTATION, AND REDUCTION OF NET CARBON EMISSIONS.

These comments are in response to the request of NRCS in the notice of extension of the comment period for the EQIP IFR for comments on the potential for EQIP to contribute to energy savings and production, climate change measures, and carbon sequestration.

a. Do not fund any EQIP applications which include breaking into uncultivated land and give a priority to EQIP applications that involve the transition of land in row crop cultivation to perennial cover.

Unbroken soils, including forestland and grasslands, are the nation's single greatest reservoir of CO2 sequestration. NSAC urges that NRCS prohibit the funding of any EQIP contract that entails agricultural cultivation on previously unbroken soils. NRCS should give a priority to EQIP applications that involve the transition of land in row crop production to permanent, perennial cover including intensively managed rotational grazing systems. The limited resources of USDA's conservation programs should be targeted to projects that provide demonstrable improvements in the CO2 sequestration and reduction of other greenhouse gas (GHG) emissions.

b. Promote implementation of organic farming systems to increase carbon dioxide (CO2) sequestration and lower levels of nitrous oxide (N2O) emissions.

There is a growing body of scientific research indicating that organic production systems which use regenerative, organic practices that include cover crops, composting and crop rotation are effective in reducing atmospheric CO2 by pulling it from the air and storing it in the soil as carbon. Organic production systems also have the added benefit of avoiding use of synthetic nitrogen fertilizers, which are produced with a high consumption of fossil fuels and whose use also results in significant emissions of N2O.

Studies showing the effectiveness of organic production systems in reducing greenhouse gas (GHG) levels include long-term side-by-side comparisons of organic and conventional cropping systems conducted by the Rodale Institute and corroborated by research centers at the University of California at Davis, University of Illinois, Iowa State University and USDA research facilities at Beltsville, Maryland.[12] Organic agriculture can mitigate the effects of climate change by sequestering more carbon than conventional agriculture through enhanced soil management. Soils with higher biological activity store carbon, and while uncultivated lands store more carbon than cultivated ones, grain production systems managed organically over time increase soil carbon by 15 to 28%.[13] Conventional grain production typically results in soil carbon levels in the range of 1-3%.[14] There is a growing body of scientific literature that shows increased storage capacity of organic soils.[15,16]

c. In cooperation with other USDA agencies, particularly the Agricultural Research Service, undertake an assessment of the data on the effect of conservation tillage on carbon

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[12] For a recent summary of these studies, see Tim J. LaSalle & Paul Hepperly, Regenerative Organic Farming: A Solution to Global Warming (Rodale Institute)(2008)(posted on the web at http://www.rodaleinstitute.org/files/Rodale_Research_Paper-07_30_08.pdf).

[13] Hepperly, Paul. 2003. Organic Farming Sequesters Atmospheric Carbon and Nutrients in Soils. The Rodale Institute, White Paper. Available at: http://newfarm.rodaleinstitute.org/depts/NFfield_trials/1003/carbonwhitepaper.shtml.

[14] Ibid.

[15] Horwath, W.R., O.C. Devêvre, T.A. Doane, A.W. Kramer, and C. van Kessel. 2002. Soil C Sequestration Management Efforts on N Cycling and Availability. In Agricultural Practices and Policies for Carbon Sequestration in Soil, ed. By Kimble, J.M., R. Lal, and R.F. Follett, 155-164. Lewis Publishers, an imprint of CRC Press.

[16] Hepperly, Paul. 2003. Organic Farming Sequesters Atmospheric Carbon and Nutrients in Soils. The Rodale Institute, White Paper. Available at: http://newfarm.rodaleinstitute.org/depts/NFfield_trials/1003/carbonwhitepaper.shtml

sequestration before funding EQIP contracts for conservation tillage whose purported conservation goal is increased soil organic carbon.

Conservation tillage practices are recognized as one of a number of conservation practices that can help reduce soil erosion. Over the last decade, the view that conservation tillage is also a means for net sequestration of soil organic carbon has also gained credence. Recent analysis of the studies on which this view is based, however, has raised questions about whether conservation tillage actually results in net increase in SOC throughout the soil profile. A team of soil scientists, led by USDA Agricultural Research Service scientist John M. Baker, found that conservation tillage in conventional systems may actually change the distribution of soil organic carbon to a higher level in the soil profile, while organic production practices have higher soil organic carbon levels in deeper soil layers.[17] We also note that the Rodale Institute is taking the lead in providing what may be the best system -- no-till and low-till organic production methods.[18]

The extent to which no-till systems sequester carbon is of particular importance because of developing emission-trading arrangements. An assumption is being made in some of these arrangements that a farmer who merely switches from conventional tillage to a no-till system - without doing more to increase soil organic carbon such as incorporating cover crops - will be increasing the overall carbon sequestered in the soil profile. In addition, recent research also indicates that in no-till systems that use synthetic nitrogen fertilizers, excess fertilizer stimulate microbial growth resulting in significant decreases in soil carbon. Carbon trading systems that allow industrial CO2 emitters to offset their CO2 emissions by purchasing carbon credits presumably generated by no-till soil carbon sequestration in conventional systems may be based on inadequate data. If the assumption about the amount of soil carbon sequestration is incorrect, the trading schemes will do little or nothing to decrease overall GHG levels.

Note that NSAC is not questioning the potential role that conservation tillage may play as part of a suite of practices aimed at reducing soil erosion. But we do question whether there is sufficient research for NRCS to give a high ranking *for carbon sequestration* to EQIP proposals which relies *solely* on conservation tillage.

d. For EQIP contracts that involve the production of biomass feedstocks, give highest priority to applications that involve the planting of perennial biomass stocks on land in row crop production or, for applications that involve annual crops, give a priority to applications that include a combination of resource-conserving crop rotations, conservation tillage, cover crops, and strategically located conservation buffers to increase conservation performance and the sustainable production of biomass feedstocks for the emerging bio-economy.

The recent boom in biofuel production, particularly the production of corn-based ethanol, has resulted in increased pressure on the nation's agricultural soil resources. NSAC is also concerned that large-scale bioenergy feedstock production could also compromise the nation and the world's ability to produce adequate nutritious food. NRCS should focus greater attention on assisting farmers to establish both large and small-scale wind and solar projects to make the transition to low carbon energy consumption.

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[17] John M. Baker, Tyson E. Ochsner, Rodney T. Venterea, and Timothy Griffis, Tillage and Soil Carbon Sequestration – What Do We Really Know?, 118 Agriculture, Ecosystems and Environment 1-5 (2007).
[18] See, e.g. Dave Wilson Choosing Cover Crops for No-till Organic Soybeans (2005)(posted at http://newfarm.rodaleinstitute.org/depts/weeds/features/1005/weeds_dw.shtml) and other articles posted at the Rodale Institute's Integrated Weed Management webpage at http://newfarm.rodaleinstitute.org/depts/weeds/index.shtml.

NRCS should also take great care that EQIP payments involving biomass feedstock production are designed to increase the conservation performance of agricultural and forest land. NRCS should not approve any contract that includes breaking into any unbroken land, most especially native prairie.

For EQIP payments for land already in row crop cultivation, NRCS should target give priority to contracts that involve the planting of perennial biomass feedstocks on land in row crop production and second to contracts that provide for significant and measurable improvements in the conservation performance of land in row crop production. Improvements in row crop production could be achieved with EQIP projects that provide for a combination of resource-conserving crop rotations, conservation tillage, cover crops, and strategically located conservation buffers related to the sustainable production of biomass feedstocks for the emerging bio-economy.

e. Undertake a full assessment of the GHG emissions implications of EQIP funding for CAFOs, particularly CAFO methane digesters.

NSAC has long urged NRCS to undertake a full environmental assessment of incentives for confined animal feeding operations (CAFOs) in the farm bill conservation programs, particularly EQIP. To date, NRCS has contended that it does not even know how many CAFOs have received EQIP incentives for waste lagoons, methane digesters and other structural elements and how much overall EQIP funding has gone into subsidizing CAFOs.

Large-scale CAFOs use large amounts of fossil fuel energy, especially for heating, cooling and ventilation. They also require huge volumes of feed produced in row crop systems using synthetic fertilizer. This feed production results in releases of CO2 and nitrous oxides. The storage of CAFO manure wastes in large-scale lagoons and other systems can result in increased levels of methane production. Even if the levels of methane are partially reduced using methane digesters, the CAFO must still account for phosphorus and other potential pollutants contained in the remaining post-digestion wastes. In addition, the large subsidies provided to CAFOs by NRCS set up an uneven playing field for farmers and ranchers who use smaller scale, grass-based and pasture systems for livestock production which are best suited to GHG emission reduction and overall use less energy. Any environmental and economic assessment for CAFOs should include comparisons of environmental impacts with these production systems. As provided in Section 3 of these comments, NSAC urges that NRCS prohibit the use of EQIP funding for contracts that include funding for new or expanded CAFOs.

8. INCLUDE ADDITIONAL INFORMATION IN THE LIST OF PROGRAM INFORMATION AVAILABLE TO THE PUBLIC UNDER EQIP IFR § 1466.5(D).

NSAC appreciates the NRCS determination in § 1466.5(d) to provide the public with national, state and local information regarding program implementation such as resource priorities, eligible practices, ranking processes, payment schedules, fund allocations, and program achievements. It is also important that this information be made available to the public and policymakers. We recommend in addition that NRCS expand this Section to include public information on funding for specific types of agricultural production methods, including organic production systems, CAFOs, etc.

We also recommend that NRCS provide information on EQIP contract performance by type of operation funded, including a follow-up assessment of conservation practices and infrastructure funded by EQIP after the completion of EQIP contracts. This is particularly important for conservation practices where a large amount of EQIP funding is directed to infrastructure for a single operation under a short-term contract. For example, we have yet to see any cumulative information on the long-term performance of animal waste digesters funded by EQIP or the overall water savings from the establishment of pivot irrigation systems.

9. AMEND EQIP IFR § 1466.20(i) TO PROVIDE, IN CONFORMITY WITH THE LANGUAGE OF THE 2008 FARM BILL, THAT STATE CONSERVATIONISTS GIVE A PRIORITY FOR EQIP APPLICATIONS FOR WATER CONSERVATION OR IRRIGATION EFFICIENCY PRACTICES *ONLY IF* THE PRODUCER AGREES NOT TO USE ANY ASSOCIATED WATER SAVINGS TO BRING NEW LAND UNDER PRODUCTION OR IS ENROLLED IN WATERSHED PROJECT THAT PROVIDES FOR EFFECTIVE WATER CONSERVATION IN THE WATERSHED AS PROVIDED IN EQIP IFR § 1466.20(ii).

EQIP IFR § 1466.20(2) appears to be an attempt by NRCS to comply with the new requirement in the 2008 Farm Bill for prioritizing EQIP applications for water conservation or irrigation practices. The statutory measure reads:

> (2) Priority.--In providing payments to a producer for a water conservation or irrigation practice, the Secretary shall give priority to applications in which—
>
> ``(A) consistent with the law of the State in which the eligible land of the producer is located, there is a reduction in water use in the operation of the producer; or
>
> ``(B) the producer agrees not to use any associated water savings to bring new land, other than incidental land needed for efficient operations, under irrigated production, unless the producer is participating in a watershed-wide project that will effectively conserve water, as determined by the Secretary.

EQIP IFR § 1466.20(2)(i) provides that the State Conservationist will give priority to applications for water conservation or irrigation practices where "[C]onsistent with State law in which the producer's eligible land is located, there is a reduction in water use in the agricultural operation, or where the producer agrees not to use any associated saving to bring new land under irrigation production, other than incidental land needed for efficient operations."

This appears to be a misreading of the statutory provision which would give NRCS State Conservationists the option of prioritizing applications where there is a reduction in water use but the producer does not agree not to use any associated saving to bring new land under irrigation production. This reading directly contradicts the 2008 Farm Bill language.

We recommend that NRCS amend § 1466.20(2) to conform with the 2008 Farm Bill provision.

10. NSAC APPROVES OF THE INCLUSION OF EQIP IFR § 1466.2 WHICH PROVIDES FOR AGREEMENTS WITH GOVERNMENT AGENCIES, PUBLIC AND PRIVATE ORGANIZATIONS, AND INDIVIDUALS TO ASSIST IN IMPLEMENTATION OF EQIP.

WE ALSO APPROVE OF THE PROVISION IN EQIP IFR § 1466.11 TO INCLUDE INFORMATION, EDUCATION AND TRAINING FOR PRODUCERS AMONG THE SERVICES THAT MAY BE PROVIDED BY TECHNICAL SERVICE PROVIDERS.

EQIP is intended to serve a wide array of the nation's farmers and ranchers, a very large undertaking for NRCS. In addition, the 2008 Farm Bill includes new targeted charges to NRCS to meet the needs of organic and specialty crop producers, which in many regions will bring the challenge to NRCS of dealing with a new range of crops and production methods. In addition, EQIP has special set-asides to encourage beginning farmers and ranchers, who in increasing numbers may have no family members currently engaged in farming. Many of these new farmers and ranchers want to establish grass-based dairies and

other pasture-based operations to serve growing specialty and direct markets for livestock and poultry products.

NSAC appreciates the inclusion in the EQIP IFR of the provision for agreements with private organizations and other entities and individuals to help NRCS meet these challenges. We also encourage NRCS to take full advantage of the provision for technical service providers who can provide information, education and training for both individual producers and groups of producers. Many NSAC member organizations have staff experienced in organic production, grass-based systems, and specialty crops. In addition, many of these organizations have experience with beginning farmer and rancher training programs that include conservation management and systems. We look forward to working with NRCS to supplement and expand the agency's ability to serve sustainable and organic farmers and ranchers.

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Thank you for your consideration of these National Sustainable Agriculture Coalition recommendations for an EQIP final rule and guidance materials.

Sincerely,

Martha L. Noble

Martha L. Noble
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