

**SUPPLEMENT TO THE
ENVIRONMENTAL QUALITY INCENTIVES PROGRAM
ENVIRONMENTAL ASSESSMENT**

Natural Resources and Conservation Service
U.S. Department of Agriculture
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1.0 Introduction

The Environmental Quality Incentives Program (EQIP), authorized by the Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104-127 (April 4, 1996)), was most recently amended by the Farm Security and Rural Investment Act of 2002, P.L. 107-171 (May 13, 2002) (“the 2002 Act”). To implement EQIP, as amended by the 2002 Act, the Natural Resources Conservation Service (NRCS) published in the Federal Register a proposed rule with request for comments (68 FR 6655 (February 10, 2003)). At the same time, NRCS made available to the public a Draft Environmental Assessment (EA) that analyzed the impacts of the proposed rule on the quality of the human environment. The Draft EA was prepared on a National programmatic basis. NRCS was of the preliminary opinion, based on the results of the Draft EA, that implementation of EQIP would have no significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts which the National Environmental Policy Act of 1969, as amended, (NEPA) is intended to help decision makers avoid and mitigate; therefore, NRCS also made a Draft Finding of No Significant Impact (FONSI) available to the public at that time. NRCS indicated that it would accept comments on the Draft EA and Draft FONSI through the mail or via internet until March 12, 2003.

On May 30, 2003, NRCS published in the Federal Register the final rule implementing EQIP, as amended (68 FR 32337 (May 30, 2003)), and at that time provided the public with notice of the availability of the Final EA and FONSI.

In the Final EA, NRCS stated that it “received no comments on the draft EA or draft FONSI.” In fact, however, NRCS had received one comment letter on the Draft EA. The mistake in failing to consider these comments as part of the process to comply with NEPA, was discovered after the EA and FONSI were made available to the public. To ensure the comments receive appropriate consideration as part of the NEPA process, NRCS made a determination to correct the record and address the comments by issuing this Supplement to the Final EQIP EA.

NEPA requires that Federal agencies prepare Environmental Impact Statements (EISs) for major Federal actions significantly affecting the quality of the human environment. In addition, the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508) require Federal agencies to prepare EAs to assist in determining whether there is a need to prepare an EIS for actions that have not been categorically excluded from NEPA. NRCS has reviewed the comments on the Draft EQIP EA to determine whether the comments provide new information that would lead NRCS to find that publication of the final rule to implement EQIP on a National basis may result in the significant adverse impacts that NEPA is intended to help decision makers avoid and mitigate; and thus whether an EIS should be prepared.

2.0 Purpose and Need

As stated in both the Draft and Final EQIP EA, the need to which NRCS is responding by proposing action is the need to implement the EQIP program as amended by the 2002 Act in a manner that achieves the purposes for which Congress authorized EQIP, including:

- Assisting producers to comply with local, State, and national regulatory requirements concerning soil, water and air quality; wildlife habitat; and surface and groundwater conservation.
- Assisting producers to address national, State, Tribal, and local resource concerns so there is no need for resource and regulatory programs.
- Providing flexible assistance to producers to install and maintain conservation practices that enhance soil, water, related natural resources (including grazing lands and wetlands), and wildlife, while sustaining production of food and fiber.
- Assisting producers to make beneficial, cost-effective changes to cropping systems, grazing management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural land.

Statutory requirements, including the purposes referenced above, as well as the wide variety in the types of agricultural operations and related environmental and social concerns across the U.S., require that NRCS implement EQIP with flexibility to address differences in State, Tribal and local situations without undue bureaucratic burdens. Thus, State Conservationists must have a great deal of authority and flexibility to determine how best to implement EQIP within each State so the program achieves its purposes.

3.0 Summary of Comments

The commenter acknowledged the changes made by the 2002 Act amendments to EQIP and stated that NRCS should include alternatives related to the following questions in its National Programmatic EA:

1. “whether the use of EQIP funds for structural practices related to manure management for operations located in floodplains has the potential to significantly affect the quality of the human environment;
2. whether the use of EQIP funds for structural practices related to manure management for new Concentrated Animal Feeding Operations (CAFOs) has the potential to significantly affect the quality of the human environment;
3. whether the use of EQIP funds for structural practices related to manure management for Animal Feeding Operations (AFOs) expanding to CAFOs has the potential to significantly affect the quality of the human environment;
4. whether the use of EQIP funds for structural practices related to manure management for expanding existing CAFOs has the potential to significantly affect the quality of the human environment;
5. whether allowing contracts of up to \$450,000 has the potential to significantly affect the quality of the human environment;
6. whether setting the minimum term of contract at one year beyond the date of completion of the project has the potential to significantly affect the quality of the human environment; and so on.”

The commenter stated that it “believes, in particular, that questions 1, 2, 3, and 4 could have significant negative impacts on wildlife.”

The commenter further added that “NRCS should direct State Conservationists to provide adequate public notice and an opportunity for the public to speak at State Technical Committee meetings on the issue of EQIP funding for CAFOs.”

4.0 Discussion of Comments

Question 1

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of whether the use of EQIP funds for structural practices related to manure management for operations located in floodplains has the potential to significantly affect the quality of the human environment.

Construction in floodplains, which includes structural practices related to manure management, is governed by Executive Order 11988, “Floodplain Management” and by existing NRCS policy on floodplain management (General Manual Title 190, Part 410.25, http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_190_410_b.htm). The rule to implement the EQIP program, as amended, does not propose to modify these existing policies. In addition, NRCS explicitly addressed resources of special concern, which include floodplains, when it stated in the EA that:

“The effects of the practices may vary somewhat depending on the local ecosystem(s), methods of practice installation, and presence of special resource concerns in a particular State, such as the presence of a coastal zone, endangered or threatened species, historic or cultural resources, and the like.”

The EA acknowledges NRCS responsibilities regarding certain special resource concerns and further states that “NRCS will also implement practices in a manner that is consistent with the NRCS policy to avoid, minimize or mitigate adverse effects to the extent feasible.” The existing policy on floodplain management requires NRCS to

“make a case-by-case decision on whether to limit assistance whenever a land user proposes converting existing agricultural land to a significantly more intensive agricultural use that could have significant adverse effects on the natural and beneficial values or increase flood risk in the base flood plain.”

The policy also states that

“NRCS will avoid to the extent possible the long- and short-term adverse effects of the occupancy and modification of base flood plains. In addition, NRCS also will avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative.”

The EA supporting promulgation of the EQIP rule is a programmatic EA. As such, it would not be reasonable to attempt to describe every possible type of effect resulting from actions that could be taken under the rule. Should site-specific actions proposed for EQIP funding have the potential to significantly affect the quality of the human environment, these actions would be appropriately analyzed in a NEPA document that is tiered to this National Programmatic NEPA document. Such an approach is supported by the CEQ regulations implementing NEPA and NRCS explicitly provided for situations in which tiered analysis might be required by stating on page 1 of the Final EQIP EA that “[a]dditional environmental review at subsequent stages of program implementation will be undertaken consistent with NEPA requirements and NRCS regulations.”

For these reasons, NRCS has determined that it will not supplement the National Programmatic EQIP EA to consider alternatives related to the question of whether the use of EQIP funds for structural practices related to manure management for operations located in floodplains has the potential to significantly affect the quality of the human environment.

Question 2

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of whether the use of EQIP funds for structural practices related to manure management for new Concentrated Animal Feeding Operations (CAFOs) has the potential to significantly affect the quality of the human environment.

As stated in the EA, the purpose and need underlying NRCS rulemaking was to implement EQIP in a manner that achieves the purposes for which Congress authorized EQIP. Congress specifically stated in the EQIP authorizing legislation that “[t]he purposes of the environmental quality incentives program established by this chapter are to promote agricultural production and environmental quality as compatible goals, and to optimize environmental benefits, by—“(1) assisting producers in complying with local, State, and national regulatory requirements... [and] (2) avoiding, to the maximum extent practicable, 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....”

When Congress initially authorized EQIP in the Federal Agricultural Improvement and Reform Act of 1996, the legislation included a limitation that “A producer who owns or operates a large confined livestock operation...shall not be eligible for cost-share payments to construct an animal waste management facility.” (PL 104-127, Sec. 1240B (e)(1)(B).) However, the 2002 Act amendments to EQIP removed this limitation. Moreover, Congress specifically identified animal waste management facilities as one of the structures eligible for EQIP funding and indicated that “[t]o be eligible to receive cost-share payments or incentive payments under the program, a producer shall submit to the Secretary for approval a plan of operations that...in the case of a confined livestock feeding operation, provides for development and implementation of a comprehensive nutrient management plan, if applicable.” This is clear evidence that Congress intended EQIP funds should be made available to all CAFO operators, as well as other livestock producers, to assist them in meeting environmental regulatory requirements and addressing

natural resource concerns related to their operations. Moreover, Congress provided the Secretary no discretion to deny access to the program to new CAFO operators, operators of expanding CAFOs, or any other subset group of the livestock production industry.

The purpose of the EQIP programmatic EA is to analyze the effects of alternatives in areas over which USDA has discretion, not to analyze all the impacts of all the legislated changes, an analysis more appropriately provided in a legislative EIS. For these reasons, NRCS has determined that it will not supplement the National Programmatic EA to consider alternatives related to the question of whether the use of EQIP funds for structural practices related to manure management for new Concentrated Animal Feeding Operations (CAFOs) has the potential to significantly affect the quality of the human environment.

Question 3

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of use of EQIP funds for structural practices related to manure management for Animal Feeding Operations (AFOs) expanding to CAFOs has the potential to significantly affect the quality of the human environment. The reasons for this determination are the same as those discussed in relation to Question 2.

Question 4

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of whether the use of EQIP funds for structural practices related to manure management for expanding existing CAFOs has the potential to significantly affect the quality of the human environment. The reasons for this determination are the same as those discussed in relation to Question 2.

Question 5

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of whether allowing contracts of up to \$450,000 has the potential to significantly affect the quality of the human environment. When Congress initially authorized EQIP in the Federal Agricultural Improvement and Reform Act of 1996, the legislation included a \$50,000 limitation for EQIP cost-share and incentive payments paid to a producer under a multiyear contract. (P.L. 104-127, Sec. 1240G (a).) The 2002 Act amended this provision to provide that

“An individual or entity may not receive, directly or indirectly, cost-share or incentive payments under this chapter that, in the aggregate, exceed \$450,000 for all contracts entered into under this chapter by the individual or entity during the period of fiscal years 2002 through 2007, regardless of the number of contracts entered into under this chapter by the individual or entity.” (P.L. 107-424, Section 1240G.)

Congress's intent to allow \$450,000 in payments is clear and there is no indication that the limitation was to be lowered to thwart the goals of Congress that are discussed under Question 2. The purpose of the National Programmatic EQIP EA was to analyze the effects of alternatives in areas over which USDA has discretion, not to analyze all the impacts of all the legislated changes, an analysis more appropriately provided in a legislative EIS. For these reasons, NRCS has determined that it will not supplement the EA to consider alternatives related to the question of whether following Congress' direction in allowing contracts of up to \$450,000 has the potential to significantly affect the quality of the human environment.

Question 6

NRCS has determined not to supplement the National Programmatic EA for EQIP to consider alternatives related to the question of whether setting the minimum term of contract at one year beyond the date of completion of the project has the potential to significantly affect the quality of the human environment. The 2002 Act provides that

“A contract under this chapter shall have a term that—

(A) at a minimum, is equal to the period beginning on the date on which the contract is entered into and ending on the date that is 1 years after the date on which all practices under the contract have been implemented; but

(B) not to exceed 10 years.” (P.L. 107-171, Sec. 1240B(b)(2).)

Congress's intent is clear as to contract duration and there is no indication that minimum time duration should be raised to thwart the goals of Congress discussed under Question 2. The purpose of the National Programmatic EQIP EA was to analyze the effects of alternatives in areas over which USDA has discretion, not to analyze all the impacts of all the legislated changes, an analysis more appropriately provided in a legislative EIS. For these reasons, NRCS has determined that it will not supplement the EA to consider alternatives related to the question of whether setting the minimum term of contract at one year beyond the date of completion of the project has the potential to significantly affect the quality of the human environment.

Additional Comment

In addition to the six questions the commenter requested NRCS address by adding alternatives in the EA, the commenter stated NRCS should direct State Conservationists to provide adequate public notice and an opportunity for the public to speak at State Technical Committee meetings on the issue of EQIP funding for CAFOs. State Technical Committee meetings are open to the public and public notice of meetings is required. The policies related to State Technical Committees are codified at 7 CFR Part 610, including the provisions governing public notice of State Technical Committee meetings, Committee membership and Committee authority and responsibility. The rule to implement EQIP, as amended, is an action separate from promulgation of rules on State Technical Committees; therefore, the issue raised by the commenter is considered to be outside the scope of the EQIP EA.

5.0 Finding of No Significant Environmental Impact

I have reviewed the discussion of the comments received on the EQIP EA and determined no new information is provided that indicates NRCS should supplement the EA to address additional issues or alternatives or that changes previous discussions of the potential effects of the program. NRCS either has no authority to exercise discretion in the areas raised by the commenter, or the comments relate to other existing policies that are outside the scope of this action.

As a result, I have determined that there will be no significant individual or cumulative impacts on the quality of the human environment as a result of the discretion I am exercising in implementing EQIP, as amended, particularly when focusing on the significant adverse impacts which NEPA is intended to help decision makers avoid and mitigate. Because of the potential to affect one type of resource while improving the condition of another resource, there may at times be minimal site-specific adverse environmental effects, individually or cumulatively. However, NRCS has in the past and will continue to prepare documentation of an environmental evaluation on a site-specific level and will consult with the appropriate organizations to avoid, reduce or mitigate adverse impacts on protected resources and will comply with requirements protecting unique geographic features and other resources, as well as NRCS policies protecting natural resources (EQIP Final EA pages 9, 10). Thus, any adverse effects that may result from National implementation of this program will occur at a much lower threshold than the EIS threshold.

Because of the steps NRCS will take to work with other agencies to avoid, mitigate, and reduce any potential adverse effects, there is no threat of a violation of any Federal, State or local law or other requirements for the protection of the environment. There is no impact on public health or safety identified in this EA or otherwise expected. Furthermore, there is no effect identified that might be considered highly controversial or uncertain or that might involve unique or unknown risks. Neither the proposed action nor any of the alternatives is likely to establish a precedent for future actions.

Implementation of the EQIP rule is not sufficiently related to other actions that either individually or cumulatively is likely to result in the type of significant impacts that NEPA is intended to address. To the extent other NRCS EQIP activities may result in significant effects to the quality of the human environment, a State or area-wide EA or EIS may be prepared separately from this National EA.

Based on the information presented in the Final EQIP EA and this Supplement to the EQIP EA, I find that the proposed action is not a major Federal action significantly affecting the quality of the human environment and an EIS will not be prepared.

BRUCE I. KNIGHT
Chief, Natural Resources Conservation Service
U.S. Department of Agriculture

DATE