

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE FINAL INTERIM RULE:
ENVIRONMENTAL QUALITY INCENTIVES PROGRAM**

Agency: US Department of Agriculture
Natural Resources Conservation Service (NRCS)

Subject: Civil Rights Impact Analysis
Environmental Quality Incentives Program Final Rule
2008 Farm Bill

A review of the interim final rule, Environmental Quality Incentives Program (EQIP) has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the EQIP interim final rule would have a disproportionate adverse civil rights impact for NRCS producers who are minorities, women or persons with disabilities.

BACKGROUND

EQIP is a voluntary nationwide program implemented under the general supervision and direction of the Chief of NRCS, under the borrowing authority of the Commodity Credit Corporation (CCC). EQIP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. Through EQIP, NRCS provides assistance to eligible farmers and ranchers to address soil, water, and air quality, wildlife habitat, surface and groundwater conservation, and related natural resource concerns. EQIP's financial and technical assistance help producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. The purposes of the program are achieved by implementing conservation practices. NRCS first allocated funds for EQIP in 1996. Over the life of the program, EQIP has entered into 314,000 contracts with farmers and ranchers to apply conservation practices on approximately 143 million acres.

The EQIP was authorized under section 334 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), 16 U.S.C. 3836a, which amended Section 1240 of the Food Security Act of 1985 (the 1985 Act), 16 U.S.C. 3830 et seq. The 2008 Act further amends Sections 1240 of the 1985 Act. In response to the 2008 Act's amendments, NRCS is issuing an interim final rule, with request for comment. The interim final rule, with request for comment, also incorporates changes made by NRCS to improve program efficiency and to adhere more closely to the program's statutory framework.

LEGISLATIVE CHANGES

Specifically, EQIP has been amended by the following sections of the 2008 Act:

1. *Section 2001* (common definitions) adds or revises the following terms: “nonindustrial private forest land,” “person,” “legal entity,” “technical assistance,” “integrated pest management,” and “socially disadvantaged farmer or rancher.”
2. *Section 2501* reaffirms EQIP’s geographic scope to include nonindustrial private forest lands.
3. *Section 2502* extends the program’s implementation through fiscal year 2012, i.e. September 30, 2012.
4. *Section 2502* adds or revises the following definitions: “National Organic Program,” “organic system plan,” and “payment.”
5. *Section 2503* provides payments for conservation practices related to organic production and for conservation practices related to the transition to organic production.
6. *Section 2503* enables NRCS to provide payments up to 75% of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training. Section 2503 also provides payments to producers up to 100% of income forgone by a producer to implement particular conservation practices. Where a producer incurs both costs in implementing a conservation practice and foregoes income related to that practice implementation, a producer may receive both a payment up to 75% of the costs incurred and up to 100% of the income foregone. (Note: Section 2503 provides the Secretary with discretion to accord great significance to a conservation practice that the Secretary determines promotes residue management, nutrient management, air quality management, invasive species management, pollinator habitat, animal carcass management technology, or pest management.)
7. *Section 2503* limits payments to \$20,000 per year or \$80,000 during any six-year period for persons or legal entities who receive payments for conservation practices related to organic production and to the transition to organic production.
8. *Section 2503* enables NRCS to cancel or otherwise nullify a contract if a producer who is receiving payments for organic production is not pursuing organic certification or is not in compliance with the Organic Foods Production Act.
9. *Section 2504* requires NRCS to prioritize applications: (1) based on overall cost-effectiveness, (2) based on how effectively and comprehensively the project addresses the designated resource concern or resource concerns, (3) that best fulfill the purposes of EQIP, and (4) that improve conservation practices or systems in

place at the time the contract offer is accepted or that will complete a conservation system. (Note: Items 2 and 3 are already included in the existing EQIP rule.)

10. *Section 2504* requires that applications of similar crop or livestock operations be grouped together for evaluation purposes.

11. *Section 2506* requires that the Secretary consider a plan developed in order to acquire a permit under a water or air quality regulatory program as equivalent to a plan of operations, if the plan contains elements equivalent to those required in a plan of operations. *Section 2506* also requires that the Secretary, to the maximum extent practicable, eliminate duplication of planning activities.

12. *Section 2508* limits payments to persons or legal entities to \$300,000 during any six-year period, except for projects having special environmental significance (the Secretary has the ability to determine such projects of special significance). In these cases, payments will be limited to \$450,000 (during any six-year period).

13. *Section 2509* requires the Secretary to provide payments, through the Conservation Innovation Grants Program, to producers to implement practices to address air quality concerns from agricultural operations and to meet Federal, State, and local regulatory requirements.

14. *Section 2704* requires the Secretary to allocate five percent of the funds to assist socially disadvantaged farmers and ranchers and to allocate an additional five percent of the funds to assist beginning farmers and ranchers.

15. *Section 2711* revises the definition of "Local Work Group" to make them exempt from the Federal Advisory Committee Act of 1972.

The following are amendments being made to the EQIP regulation, 7 C.F.R. Part 1466 to conform to the statutory requirements and provide further administrative clarifications:

1. In §1466.3, NRCS expands the definition of conservation practice to include conservation planning activities. The term, "conservation practice," is defined as follows:

"Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management plans, and other plans determined acceptable by the Chief."

In §1466.3, NRCS also defines forest management plans as follows:

"Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is

approved by the State Conservationist. The forest management plan may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan complies with Federal, State, Tribal, and local laws, regulations, and permit requirements.

2. In §1466.20, NRCS provides payments for water conservation practices on new incidental land brought into production, provided the producer is participating in a watershed-wide project that will effectively conserve water. A State Conservationist will use the following criteria to determine an acceptable watershed-wide project:
 - The project area has a current, comprehensive water resource assessment,
 - The project sponsors have demonstrated effective water conservation management strategies, and
 - The project sponsors have consulted relevant State and local agencies.

3. In §1466.23, NRCS revises the rule to increase and advance payments to historically underserved producers. NRCS will award “historically underserved producers” the applicable payment rate and an additional rate that is not less 25% above the applicable rate, provided this increase does not exceed 90% of the incurred costs associated with the conservation practice. NRCS will also provide advance payments to historically underserved producers for the purpose of purchasing materials or services. The advance payment shall not exceed 30% of the total costs.

4. In §1466.21, NRCS lowers the contract dollar limitation from \$450,000 to \$300,000, except for projects of special environmental significance (see below).

5. In §1466.21 and §1466.24, NRCS waives the contract and payment limitations from \$300,000 to \$450,000 for projects of special environmental significance and outlines the criteria for determining projects of special environmental significance. Projects of special environmental significance must meet the following criteria, as determined by the Chief:
 - The project will have substantial positive impacts on critical resources in or near the project area (e.g., impaired water bodies, at-risk species, or air quality attainment);
 - The project clearly address national priorities and State, Tribal, or local priorities, as applicable; and
 - The project assists the participant in complying with Federal, State, and local regulatory requirements.

CIVIL RIGHTS IMPACT ANALYSIS

The Civil Rights Impact Analysis is directed towards the identification of actual or potential civil rights issues. The purpose is to identify adverse implications the proposed EQIP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate

impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review examined: (A) the rule and general provision; (B) administration and development; (C) historical participation data; (D) eligibility criteria; (E) outreach strategy; (F) barrier removal provisions; (G.) conclusion; and (H) NRCS Civil Rights Director's certification. The examination sought to determine if all the affected groups:

- if all the affected groups are provided the same opportunities to participate in the decision-making or rulemaking process for EQIP,
- if all the affected groups have historically been provided the same opportunities to participate in NRCS programs, and
- if all the affected groups are provided the same information to decide if they wish to participate in the EQIP.

A. Environmental Quality Incentives Program Rule and Implementation Plan

Description of the EQIP

EQIP was reauthorized by the Food, Conservation, and Energy Act of 2008 to promote agricultural production and environmental quality as compatible national goals. EQIP continues USDA's commitment to streamlining and improving its conservation programs and providing flexible technical and financial assistance to producers to install and maintain conservation systems that enhance soil, water, related natural resources (including grazing land and wetland), and wildlife while sustaining production of food and fiber.

EQIP activities will be carried out according to an EQIP plan of operations. This plan of operations addresses the conservation and environmental purposes to be achieved through one (1) or more conservation practices. A voluntary program, EQIP offers financial and technical help to perform or implement conservation practices called for in contracts up to ten (10) years on eligible agricultural land. These practices are subject to NRCS technical requirements adapted for local conditions.

NRCS may provide payments up to 75% of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training. Under the 2008 Act, NRCS may also provide payments to a producer up to 100% of income forgone to implement particular conservation practices. Where a producer incurs both costs in implementing a conservation practice and foregoes income related to that practice implementation, a producer may receive both a payment up to 75% of the costs incurred and up to 100% of the income foregone.

For historically underserved producers, NRCS will award the applicable payment rate and an additional rate that is not less 25% above the applicable rate, provided this

increase does not exceed 90% of the estimated incurred costs associated with the conservation practice. NRCS will also provide advance payments to historically underserved producers for the purpose of purchasing materials or services. The advance payment shall not exceed 30% of the total costs. Payment may also be made to producers for conservation practices related to organic production and for conservation practices related to the transition to organic production. Assistance to producers engaged in organic production may not exceed the aggregate of \$20,000 per year or \$80,000 during any six year period.

NRCS will also establish a national target to set aside five percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers.

B. Administration and Development

Application Evaluation

EQIP applications will be accepted throughout the year. The 2008 EQIP criteria also requires NRCS ensure national, State, and local priorities are effectively addressed. Applications will be prioritized in accordance with, but not limited to, the following criteria:

- their overall level of cost effectiveness to ensure that the conservation practices and approaches proposed are the most efficient means of achieving the anticipated environmental benefits;
- based on how effectively and comprehensively the project addresses the designated resource concern(s);
- that best fulfill the purpose of the environmental quality incentives program; and
- that improve conservation practices or systems in place on the operation at the time the contract offer is accepted or that will complete a conservation system.

In addition, NRCS is directed, to the greatest extent possible, to group applications of similar crop or livestock for evaluation purposes or otherwise evaluate applications relative to other applications for similar farming operations.

Program Delivery

EQIP utilizes the state technical committees and local working groups to implement the program to address identified needs and concerns.

Signup Period and Contract Determinations

Any producer who is eligible may submit an application for participation in EQIP at a USDA service center. Information will be provided that explains the process to request assistance. Applications will be accepted throughout the year.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data, a barrier analysis on participation was not conducted. Historical data has been maintained, however it has been deemed unreliable due to the fact it does not include information on the number of program participants with disabilities, nor does it differentiate between whether small business entities are male or female owned.

D. Eligibility

Producers who are engaged in crop or livestock production on eligible land are eligible for the program. Eligible land includes cropland, rangeland, grassland, pasture, nonindustrial private forest land, and other land on which agricultural products, livestock, or forest-related products are produced and resource concerns may be addressed. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

- Privately owned land;
- Publicly owned land where:
 - The land is a working component of the participant's agricultural or forestry operation;
 - The participant has control of the land for the term of the contract; and
 - The conservation practices to be implemented on the public land are necessary for effective development will contribute to an improvement in the identified natural resource concern that is located on private land; or
- Indian land.

E. Outreach and Communication Strategy

Outreach

The NRCS Director of Communications and the Director of Outreach will provide and coordinate training regarding outreach strategies necessary to inform all segments of the affected public about the EQIP interim final rule. Public notification and outreach will be aggressively expanded to include news releases, radio and TV spots, publications, and brochures to ensure those traditionally under-served will have an equal opportunity to benefit from the proposed rule.

The Financial Assistance Programs Division (FAPD) of NRCS will work in partnership with the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed EQIP rule will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained or are being created to reach 52 Land-Grant

Universities, seventeen (17) 1890 Land-Grant Universities, 192 HACU colleges and universities located in six (6) U.S. Territories, and 32 Tribal Colleges and Universities.

FAPD will submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgrAbility Project (approximately 22,000-30,000 farmers with disabilities receive the Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint under-served producers with the newly proposed EQIP rule. Spanish-translated press release and informational materials will be made available.

Encouraging Community Involvement and Locally Led Conservation

Local offices will continue to encourage community involvement and locally led conservation activities they have underway. Locally led conservation is helping community stakeholders to:

- Assess their natural resource conservation needs;
- Set community conservation goals;
- Develop an action plan;
- Obtain resources to carry out the plan;
- Implement solutions; and
- Measure their success.

The locally led process provides for input from a broad range of agencies, organizations, businesses, and individuals in the local area who have an interest in natural resource management and are familiar with the local resource needs and conditions. Through this input process there is the opportunity for minority and socially disadvantaged groups to indicate how to address their natural resource concerns. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

F. Barrier Removal Provisions of the final EQIP Rule

The interim final rule incorporates features to address potential disparities for producers who are members of a protected group. One of these is the establishment of a national target to set aside of five percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers. This increased funding **may** result in a much higher application approval rate. Conservation payments generally provide a fairer distribution of benefits among farmers and landowners across the nation than do other farm programs such as commodity subsidies because of:

- payment limitations, and
- a greater number of farmers and ranchers are eligible to apply to participate.

The interim final rule will address major systemic barriers for producers who have historically experience distinct disadvantages in obtaining USDA program assistance by inducing and helping them to enter farming by providing incentive payments and by assisting with a higher percentage of the cost-share payments to participate. Specifically, this interim final rule provides socially disadvantaged farmers and ranchers a higher payment rate than the rate adopted under the 2003 EQIP regulation, advance payments to historically underserved producers, and establishes a national target to set aside five percent of the funds for beginning farmers and ranchers and an additional five percent of the funds for socially disadvantaged farmers and ranchers.

A Limited Resource Farmer or Rancher meets the economic threshold and qualifies for the higher cost share if they meet the following characteristics:

- Is an individual with direct or indirect gross farm sales not more than \$100,000 in each of the previous two years, and
- Has a total household income at or below national poverty level for a family of four, or has less than 50% of county median household income, in each of the previous two years.

Beginning Farmer or Rancher means a person or legal entity who:

- Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and will materially and substantially participate in the operation of the farm or ranch.
- In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.
- In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

A socially disadvantaged farmer or rancher is a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

Outreach and communication strategies will be in place to ensure all producers are provided the same information to decide if they wish to participate in EQIP. NRCS will

provide benefits to all producers regardless of their status as it relates to race, national origin, gender or disability.

G. Conclusion

Therefore, our review of the proposed rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Increased payment rates and advance payments for historically underserved producers, coupled with the national target of setting aside five percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers is expected to increase participation among these groups. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including the EQIP, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. EQIP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the EQIP rule portends no adverse civil rights implications for women, minorities and persons with disability.

H. Certification

I certify that the review and analysis of the 2008 Environmental Quality Incentives Program, Interim Final Rule has been conducted in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and Departmental Regulation 1512-1, "Regulatory Decision-Making Requirements."



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9/16/08
Date