

February 14, 2020

Natural Resources Conservation Service  
U.S. Department of Agriculture  
Washington, D.C. 20250

Re: Comments on EQIP Interim Rule, Docket ID: NRCS-2019-0009

Dear Sir or Madam:

The Agriculture Improvement Act of 2018 (the 2018 Farm Bill) made improvements to the Environmental Quality Incentives Program (EQIP) for which the Natural Resources Conservation Service (NRCS) published an interim rule on December 17, 2019, 84 Fed. Reg. 69272 (December 17, 2019). The Natural Resources Law and Policy Center with the University of Arizona is dedicated to helping landowners work through legal and policy hurdles to making productive and sustainable use of the land

The conservation title of the Farm Bill is a pillar of tools needed by agricultural producers to make appropriate use of the land. We are pleased to have this opportunity to submit these comments to make the Farm Bill programs the best they can be.

#### 1. National Priorities

The 2018 Farm Bill required 50% of program funding to be made available for livestock. Congress accorded no other agriculture sector (or conservation activity) this level of funding in EQIP. The only other mandated funding allocation is for wildlife practices at 10% of program funds. If funding choices reflect congressional priorities, then funding livestock practices is the highest program priority. This requirement should be adequately reflected in the implementing language of the rule itself.

The preamble explains that the “National Office establishes national priorities, and States must incorporate these national priorities along with State and local priorities into the ranking tools used at the State level.” (84 Fed. Reg. 69272). This is a very clear direction for what States “must” do with respect to national priorities. The section of the rule addressing national priorities, § 1466.4, should be harmonized with the preamble to ensure states approve appropriate levels of livestock funding in their programs.

In particular, the only paragraph in § 1466.4 to address livestock agriculture is §1466.4(a)(3), which identifies animal feeding operations as a national priority. Reducing waste from animal feeding operations is an appropriate national priority. However, it is not the biggest part of spending approved for cattle operations. Most EQIP funding for cattle production goes for fencing of pastures and similar field or range improvements.

Livestock agriculture needs to be addressed in greater detail in § 1466.7 so that States have a clear understanding of how this highest national priority relates to State and local priorities. We recognize that while the 50% funding requirement is an overall national obligation for administering the program, it does not impose a spending requirement in each individual state. Some states do not have livestock of any kind, while some states have producers seeking funding for more expensive practices. It seems very likely that allocations to states may vary significantly under the 50% requirement. Because funding animal agriculture practices is the highest priority for the national program as reflected in the statutory mandate for the greatest share of program funding, the national office should provide states with clear, consistent directions, starting with the framework provided by the program regulation to increase the likelihood the requirement will be appropriately administered.

## 2. Grazing Permittees on Public Land

Under § 1466.6(c)(2)(ii) of the interim rule, public land is eligible for enrollment in the program if the “[t]he participant has control of the land for the term of the contract,” among other requirements. Grazing permittees may lawfully use state or federal land if they have a lease or permit to use the land, and so they have control of the land as allowed under these instruments. There is no contract, in the traditional sense. A lease or permit is the instrument giving them the right to use the land in accordance with the terms of the instrument. The following edit would make the language consistent with the practice on the ground:

[t]he participant has a permit or lease of the land for the term of the EQIP contract.

Thank you for your consideration of our views.

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University of Arizona  
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