



April 17, 2009

Financial Assistance Programs Division
U.S. Department of Agriculture, Natural Resources Conservation Service
1400 Independence AVE, SW
Room 5237S
Washington, DC 20250-2890

Re: Docket Number NRCS-IFR-08005
comments submitted on the Environmental Quality Incentives Program
Submitted via rulemaking website at <http://www.regulations.gov>

Dear Sir or Madam:

The Izaak Walton League of America is a private, non-profit conservation organization that for more than 85 years has supported strong federal conservation policies on private lands, especially agricultural lands. Our nationwide membership lives, works and recreates in rural communities. We have a decades-long record of support for farm families and collaborative efforts to achieve conservation that sustains agriculture, habitat, and all natural resources.

IWLA comments:

§ 1466.3 Definitions.

To best meet the purpose of the Environmental Quality Incentives Program (specified in Section 1240(1) of the Food Security Act of 1985), the definition of Agricultural Land must anticipate all appropriate and applicable areas that will serve the program purpose. The definition must not be too limited and thereby enable ineligibility determinations for areas that in fact are integral to best addressing resource concerns. We request modifying the definition of Agricultural Land per below:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products, or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, wetlands, streams, riparian areas, irrigation canals, shelterbelts, buffer strips, waste land, pivot

corners and irregular and incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Note: Corresponding incorporation of this modified definition of Agricultural Land must be made in Section 1466.8(c).

The Interim Final Rule's "Summary of Provisions" specifically requests public comment on the current definition of "*at-risk species*." The Izaak Walton League of America agrees that the current definition is inadequate to best identify, assist, and conserve species in greatest need. We propose changing the definition as stated below:

***At-risk species* means any plant or animal species as determined by the State Conservationist with advice from the State Technical Committee, the U.S. Fish and Wildlife Service, the state agency responsible for fish and wildlife, and in consulting the State Wildlife Action Plan, and to include species listed as endangered or threatened under the Endangered Species Act and proposed or candidate species for listing under the Endangered Species Act.**

§ 1466.10 Conservation practices.

The "Summary of Provisions" contained in the IFR describes the separation of the first national priority in Section 1466.4(a) into two concerns in response to public feedback sought by NRCS. Quoting the IFR, the two concerns are described as, "one for water quality, to include concentrated animal feeding operation (CAFO) as well as non-point source pollution, and a separate priority for water conservation, to address the quantity of ground and surface water available."

Section 1466.4(a)(1) states that a national priority is "Reductions of non-point source pollution...and the reduction of contamination from agricultural point sources, such as concentrated animal feeding operations." We believe the Rule must be amended in order to better serve the national priority of reduced contamination from concentrated animal feeding operations. So, to ensure that program funds do not serve to exacerbate contamination incidents and risks by proliferating concentrated animal feeding operations, program funding for waste management facilities or waste transportation for new or expanding concentrated animal feeding operations should be prohibited.

We request that section 1466.10 be amended to add (e), per below:

(e) Payments will not be made to a participant for animal waste management facilities or waste transportation for new or expanding concentrated animal feeding operations.

§ 1466.21 Contract requirements.

The Food, Conservation, and Energy Act of 2008 amended Section 1240G of the Food Security Act of 1985 to change the statutory limitation on payments from \$450,000 to \$300,000 during any six-year period. In addition, the Act provides a provision of Waiver Authority as excerpted here:

“(b) WAIVER AUTHORITY.—In the case of contracts under this chapter for projects of special environmental significance (including projects involving methane digesters), as determined by the Secretary, the Secretary may—
“(1) waive the limitation otherwise applicable under subsection (a); and
“(2) raise the limitation to not more than \$450,000 during any six-year period.”.

We generally support the interpretation of the waiver authority detailed in the IFR section 1466.21(d). However, in stipulating criteria for meeting special environmental significance, the IFR specifies:

- (1) Site-specific evaluation documents have been completed, documenting that the project will have substantial positive impacts on critical resources in or near the project area (*e.g.*, impaired water bodies, at-risk species, drinking water supplies, or air quality attainment);
- (2) The project clearly addresses a national priority and State, Tribal, or local priority resource concerns, as applicable; and
- (3) The project assists the participant in complying with Federal, State, and local regulatory requirements.

We emphasize that the criteria stipulation 1466.21(d)(3)—which specifies that simply complying with regulatory requirements would be a project of special environmental significance—is not referenced anywhere in the statute. Further, meeting basic regulatory compliance is by any interpretation merely a baseline achievement, the very minimum allowable achievement. We adamantly do not believe this is an appropriate or justifiable criterion for determining that a project is of “special environmental significance.”

We request that 1466.21(d)(3) be struck and, further, we make special note that our above requested amendment 1466.10(e) would additionally ensure that no waiver will be granted to a project for animal waste management facilities or waste transportation for new or expanding concentrated animal feeding operations.

Note: Corresponding incorporation of the amended criteria must be reflected in Section 1466.24(b).

§ 1466.24 EQIP payments.

We want to emphasize that the “Summary of Provisions” contained in the IFR describes the intent of Congress to provide payments for conservation practices that assist producers in organic production or the transition to organic production. In specific detail, the “Summary of Provisions” states:

Payments for practices related to organic production shall not exceed \$20,000 per year or \$80,000 during any six-year period. This limitation excludes payments related to technical assistance and pertains only to conservation practices applied related to organic production. A producer may receive additional payments and is not subject to the organic payment limitation for conservation practices performed outside of those related to organic production, provided the sum total of all payments received does not exceed \$300,000 (unless a waiver is granted for an environmentally significant project).

However, section 1466.24(c)—as amended by March 12, 2009 correction—states only:

(c) Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, may not exceed in aggregate \$20,000 per year or \$80,000 during any 6-year period. Payments received for technical assistance shall be excluded from this limitation.

The lack of any mention of the eligibility for organic payment recipients to additionally receive payments unrelated to organic production may lead to confusion in practice and implementation by NRCS staff. We request that section 1466.24(c) be amended as below to ensure the EQIP payments rule is expressed most clearly for NRCS staff:

(c) Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, may not exceed in aggregate \$20,000 per year or \$80,000 during any 6-year period. A producer may receive additional payments and is not subject to the organic payment limitation for conservation practices performed outside of those related to organic production, provided the sum total of all payments received does not exceed \$300,000 (unless a waiver is granted for an environmentally significant project).

Conclusion:

The Izaak Walton League of America requests adoption of the changes and clarifications we have detailed above. We thank you for your consideration of these comments. Please direct any inquiries regarding this submission to Brad Redlin, IWLA Agricultural Program Director, bredlin@iwla.org, (651) 649-1446 ext. 13.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Redlin', with a long horizontal line extending to the right.

Brad Redlin
Izaak Walton League of America
Agricultural Program Director
1619 Dayton AVE, STE 202
St. Paul, MN 55104