

recommends that Local Work Groups include public comment periods in their meetings but must limit membership to representatives of state and local governments and political subdivisions and agencies thereof in accordance with the Federal Advisory Committee Act (FACA).

Section 1466.3 Definitions

Agricultural Operation

NRCS received 23 comments in response. Ten respondents suggested it should be limited to the field where the practice is being implemented, whereas one respondent suggested the field plus any contiguous parcels, and 13 respondents suggested all the land operated by the producer. The definition has been modified in the final rule to include all parcel or parcels of land, both contiguous and non-contiguous.

At-Risk Species

The proposed rule identified at-risk species habitat recovery as a National priority. Eight respondents suggested the need for a definition of at-risk species. One respondent suggested the definition to include invertebrate pollinators, one suggested imperiled species and seven respondents suggested to include Federally listed and candidate species as well as species of local concern. The Department agrees with the suggestion to define at-risk species and a definition has been included in the final rule.

Beginning Farmer and Rancher

Six comments suggesting the 10-year time frame is too long. Three respondents recommended five years and one recommended a maximum of three years. The Department has an established definition for Beginning Farmer and will continue to use the existing definition in the final rule.

Confined Livestock Feeding Operation

Two respondents recommended this definition was not necessary for implementation of EQIP. The Department does not use confined livestock feeding operation in the implementation of EQIP and has removed the definition from the final rule.

Indian Tribe

Four respondents commented on the definition of Indian tribe and how there appeared to be some inconsistency in how it was used in the Proposed Rule, including the lack of reference to Conservation District established under tribal law. No change to the definition of Indian Tribe is proposed because it

reflects the definition provided by 25 U.S.C. 3701. However, the rule has been clarified to reflect the appropriate use of Indian Tribe in the text. Conservation Districts established under Tribal law has been added to the definition of Conservation Districts.

Limited Resource Farmer and Rancher

Six comments were received; three respondents suggesting that the gross farm sales value was too low and three respondents suggesting it was deficient by not identifying future year adjustments. The Department's interagency task force reviewed the comments and modified the definition for the final rule.

Priority Natural Resource Concern

Three comments were received. One respondent supported the definition of priority natural resource concern as written and two respondents suggested including a resource objective that is being addressed through an environmental regulation. NRCS believe that optimization of environmental benefits can be achieved through a prioritization process. The definition in the final rule is not changed.

Producer

Fifty-one comments were received. Seventeen suggested that this definition specifically include private non-industrial forest land, 17 want assurance that the definition does not preclude agroforestry, and 36 suggested language that provides assurance that private non-industrial forest land is eligible for EQIP assistance. The Department recognizes forest products as an agricultural commodity and forest land as agricultural land. The definition in the final rule is not changed.

Wildlife

NRCS received 10 comments to revise the definition of wildlife; five suggest a rewording and five respondents suggested crafting the definition to allow for exclusion of exotic species. The Department believes that the National Invasive Species Council operating under the authority of Executive Order 13112 provides sufficient direction and guidance for USDA to implement EQIP without specifically including invasive species concerns in the definition. In the past, many state and local decision-makers have identified invasive species as a priority natural resource concern and used EQIP resources to support control.

New Definitions

Several respondents suggest new definitions be included in the final rule,

including: at-risk species (eight comments). One respondent suggested the definition to include invertebrate pollinators, one suggested imperiled species and seven respondents suggest the definition to include Federally listed and candidate species as well as species of local concern. The Department agrees with the suggestion to define at-risk species and a definition has been included in the final rule.

The 2002 Farm Bill established an earnings limit for an individual or entity. For purposes of consistency, the Department uses FSA's Payment Limitation and Payment Eligibility rule (7 CFR 1400) for definitions of entities and joint ventures. This rule, however, does not contain a definition of individual. The Department added definitions of entity and joint operation to the final EQIP rule and utilizes the definition of person for individual. NRCS has adjusted usage of these terms throughout the EQIP rule to assure the final rule is consistent with 7 CFR 1400 and the statutory earnings limit.

During the review process the Department recognized a concern that cancellation of EQIP contracts results in a loss of financial assistance and an expenditure of unproductive technical assistance. In an effort to minimize these losses, NRCS will include a Liquidated Damages policy in EQIP for producers who cancel contracts without proper cause and include a definition of liquidated damages in the final rule.

Three comments on the Indian trust land definition were considered restrictive and there is a need for more land inclusion. To be more inclusive a definition for Indian Land, consistent with 25 CFR part 150, has been included in the final rule and the definition for Indian Trust Land was removed from the final rule.

Section 1466.4 National Priorities

NRCS received 378 comments regarding National priorities; 141 regarding water resources, 60 related to air resources, 45 regarding soil erosion, 56 comments related to at-risk species and wildlife and 71 of a general nature.

Of the 141 comments related to water resource; 52 recommended separating water quality and water quantity into two priorities; 93 respondents recommended removing the focus on Total Maximum Daily Loads (TMDL), 82 because TMDL does not always include drinking water supplies, nine because including TMDL is analogous to targeting, and two for including 305(b) reaches (non-TMDL); and one respondent suggested the Gulf of Mexico hypoxia and contributing factors