

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1466**

[Docket No. NRCS–2014–0007]

RIN 0578–AA62

**Environmental Quality Incentives Program (EQIP)**

**AGENCY:** Natural Resources Conservation Service and the Commodity Credit Corporation, United States Department of Agriculture.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** This interim rule with request for comment amends the existing Environmental Quality Incentives Program (EQIP) regulation to incorporate programmatic changes as authorized by amendments in the Agricultural Act of 2014 (2014 Act).

**DATES:** *Effective Date:* This rule is effective December 12, 2014.

*Comment Date:* Submit comments on or before February 10, 2015.

**ADDRESSES:** You may submit comments using one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments for Docket No. NRCS–2014–0007.

- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. NRCS–2014–0007, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, MD 20705.

NRCS will post all comments on: <http://www.regulations.gov>. Personal information provided with comments will be posted. If your comment includes your address, phone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not wish for it to be made public.

**FOR FURTHER INFORMATION CONTACT:**

Mark Rose, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; Fax: (202) 720–4265.

Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.)

should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:****Regulatory Certifications**

*Executive Order 12866 and 13563*

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Upon implementation of this rule the Natural Resources Conservation Service intends to conduct a retrospective review of this rule with the purpose of improving program performance, and better understanding the longevity of conservation implementation.

The Office of Management and Budget (OMB) designated this interim rule with request for comment a significant regulatory action. The administrative record is available for public inspection at the U.S. Department of Agriculture, Natural Resources Conservation Service, Room 5831 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2890. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications section of this preamble, and a copy of the analysis is available upon request from the Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 5237 South Building, Washington, DC 20250–2890 or electronically at: <http://www.nrcs.usda.gov/programs/eqip/> under the *EQIP Rules and Notices with Supporting Documents* title.

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make the provisions easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?

- Does the rule contain technical language or jargon that is not clear?

- Is the material logically organized?

- Would changing the grouping or order of sections or adding headings make the rule easier to understand?

- Could we improve clarity by adding tables, lists, or diagrams?

- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?

- What else could we do to make the rule easier to understand?

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Even so, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

**Congressional Review Act**

Section 1246(c) of the Food Security Act of 1985 (the 1985 Act), as amended by Section 2608 of the Agricultural Act of 2014, requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego Congressional Review Act usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs, authorized or amended under Title XII of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forego delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly prior to planting season. For

these reasons, this rule is effective upon publication in the **Federal Register**.

#### *Environmental Analysis*

NRCS has prepared a programmatic Environmental Assessment (EA) in association with the EQIP rulemaking to aid in its compliance with the National Environmental Policy Act when implementing site-specific actions with EQIP funds (40 CFR 1501.3(b)). The analysis has determined that there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement is not required to be prepared (40 CFR 1508.13). The EA and Finding of No Significant Impact (FONSI) are available for review and comment for 30 days from the date of publication of this interim rule in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the current available draft of the EQIP EA and FONSI. A copy of the EA and FONSI may be obtained from the following Web site: <http://www.nrcs.usda.gov/ea>. A hard copy may also be obtained in one of the following ways: (1) Send an email to [andree.duvarney@wdc.usda.gov](mailto:andree.duvarney@wdc.usda.gov) with "Request for EA" in the subject line, or (2) mail a written request to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, P.O. Box 2890, Washington, DC 20013–2890. Comments on the environmental analysis from the public should be specific and reference that comments provided are on the EQIP EA and FONSI. Public comment on the environmental analysis only may be submitted by any of the following means: (1) Email comments to [andree.duvarney@wdc.usda.gov](mailto:andree.duvarney@wdc.usda.gov), (2) go to <http://www.regulations.gov> and follow the instructions for submitting comments for Docket No. NRCS–2014–0007, or (3) mail written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, P.O. Box 2890, Washington, DC 20013–2890.

#### *Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that the interim rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The national target of setting aside 5 percent of EQIP funds for socially disadvantaged farmers or ranchers and an additional 5 percent of EQIP funds for beginning

farmers or ranchers; and prioritizing veterans that are socially disadvantaged farmers or ranchers and beginning farmer or ranchers is expected to increase participation among these groups.

The data presented in the Civil Rights Impact Analysis indicate 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 EQIP will continue to be administered in a nondiscriminatory 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 U.S. Department of Agriculture (USDA) programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this interim rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

#### *Paperwork Reduction Act*

Section 1246 of the Food Security Act of 1985 (the 1985 Act), as amended by the Agricultural Act of 2014 (2014 Act), requires that implementation of programs authorized by Title XII of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

#### *Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

#### *Executive Order 13175*

This interim rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications,

including regulations, legislative comments or proposed legislation, and other policy statements or actions that may have substantial direct effects on: (1) One or more Indian Tribes, (2) the relationship between the Federal Government and Indian Tribes, or (3) the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under E.O. 13175. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. The agency has developed an outreach/collaboration plan that it will implement as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

#### *Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, a statement under section 202 of the UMRA is not required.

#### *Executive Order 13132*

NRCS has considered this interim rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the interim rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim rule does not have Federalism implications.

*Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of \$100,000,000 in 1994 dollars, and therefore, is not a major regulation. Therefore, a risk analysis was not conducted.

*Executive Order 13211*

This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

*Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006*

OMB published two regulations, codified at 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance in complying with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier subawards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 applies to EQIP financial assistance provided to entities. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements into the EQIP regulations and will continue to include the requisite provisions as part of its financial assistance contracts.

**Regulatory Impact Analysis—Executive Summary**

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact

Analysis (RIA) of the Environmental Quality Incentives Program (EQIP) as pursuant to the changes of the 2014 Act.

In considering alternatives for implementing EQIP, USDA followed the legislative intent to maximize beneficial conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal State, and Tribal environmental requirements. Because EQIP is a voluntary program, the program will not impose any obligation or burden upon agricultural producers who choose not to participate. The program has been authorized by the Congress at \$8 billion over the 5-year period beginning in fiscal years (FY) 2014 through 2018, with annual amounts of \$1.35 billion in FY 2014, \$1.60 billion in FY 2015, \$1.65 billion in FY 2016, \$1.65 billion in FY 2017, and \$1.75 billion in FY 2018. The program had been previously authorized with annual amounts of \$1.200 billion for FY 2008, \$1.337 billion in FY 2009, \$1.450 billion in FY 2010, \$1.589 billion in FY 2011, and \$1.750 billion in FY 2012 through FY 2014. Despite this authorization EQIP received only \$6.2 billion in funding over the five-year period from FY2009–FY2013. Funds received annually over this period were \$1.05 billion in FY 2009, \$1.18 billion in FY 2010, \$1.24 billion in FY 2011, \$1.38 billion in FY 2012 and \$1.29 billion in FY 2013. The 1985 Act, as amended by 2014 Act, makes several changes to EQIP. Please note, since EQIP is funded with CCC funds and not appropriated funds, NRCS uses the term “obligational cap” in the Regulatory Analysis to identify the funding limits that were placed on EQIP imposed by various appropriations acts.

The changes include consolidating elements of the former Wildlife Habitat Incentives Program (WHIP) into EQIP, expanding participation among military veteran farmers or ranchers, requiring that funds provided in advance that are not expended during the 90-day period beginning on the date of receipt of funds be returned, establishing an overall payment limitation over fiscal years 2014–2018 of \$450,000, providing that EQIP funding authorized by the 2014 Act remains available until expended, and requiring that at least 5 percent of available EQIP funds to be targeted for wildlife conservation practices for each fiscal year 2014–2018. This 5 percent for wildlife habitat practices is based upon the total EQIP funding allocated as financial assistance available nationally for producer contracts. Based upon historical expenditures of wildlife-

related practices in both WHIP and EQIP, and with emphasis to prioritize funding applications that address wildlife resource concerns, the agency anticipates that the actual funding associated with developing wildlife habitat through EQIP will exceed the 5 percent national target mandated by statute. NRCS monitors this funding target throughout the fiscal year and will reallocate funding if determined necessary to ensure the mandatory target is met. There are 7 percent of EQIP funds also available for eligible Regional Conservation Partnership Program (RCPP) contracts. Additional explanation regarding funding pools and EQIP program priorities is provided in the “Background” section of the Preamble.

EQIP technical and financial assistance facilitates the adoption of conservation practices that address natural resource concerns. Those practices improve on-site resource conditions and produce offsite environmental benefits for the public. Water erosion conservation practices reduce the flow of pollutants off of fields, thus improving freshwater and marine water quality including protecting fish habitat, enhancing aquatic recreation opportunities, and reducing sedimentation of reservoirs, streams, and drainage channels. More efficient irrigation practices conserve scarce water, making it available for other uses. Wind erosion control practices improve air quality, and some practices increase carbon in the soil profile. Wildlife habitat conservation practices increase wildlife habitat, enhance scenic value, and provide opportunities for recreation. NRCS has added and adopted a definition for *habitat development* to encompass the conservation practices that support the wildlife habitat activities authorized by Section 1240B(g) by the 2014 Act. The term, originally defined in the WHIP regulation, is added to EQIP at 1466.3 “Definitions”. The definition, consistent with the EQIP authority to assist with implementation of conservation practices which include the specific technical purpose of habitat development, provides for the conservation of wildlife species.

Other impacts of conservation practices may accrue to the producer. For example, the maintenance of the long-term productivity of the land, improved irrigation efficiency, improved grazing productivity, more efficient crop use of animal waste and fertilizer, and increased profits from energy conservation.

Most of this rule’s impacts consist of transfer payments from the Federal

government to producers. While those transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Given the existing limitation and lack of data, NRCS will investigate ways to quantify the incremental benefits obtained from this program. Despite the limitations on our ability to quantify and estimate the value of social costs or benefits from the implementation of conservation practices, EQIP as amended under the 2014 Act is expected to positively affect natural resources and mitigate environmental degradation. Results from the national Conservation Effects Assessment Project conducted by NRCS demonstrate that implementation of the types of conservation practices funded

under EQIP reduce sediment and nutrient loss from agricultural fields and improve water quality nationwide. Because data is limited on the natural resource impact from the EQIP program, NRCS seeks public comment on how the agency should estimate the public value of conservation resulting from assistance provided through EQIP.

The Agriculture Act of 2014 increases EQIP funding over the amount appropriated by Congress over the previous five-year period from FY 2009–FY 2013 by 29 percent to \$8.0 billion. It is estimated that the conservation practices implemented with this funding will continue to contribute to reductions of water erosion and wind erosion on cropland, pasture and rangeland, reduce nutrient losses to streams, rivers, lakes and estuaries

increase wildlife habitat, and provide other private and public environmental benefits. It is also expected that continued implementation of practices which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality, for example, from reduction in emissions such as methane. These and other practices include secondary benefits that help sequester carbon and capture greenhouse gases which contribute to climate change. NRCS estimates that the cost,<sup>1</sup> from both public and private sources, of implementing the conservation practices with EQIP funding will be \$11.9 billion dollars (FY 2014–FY 2018). Cost estimates are presented in Table 1 below.

TABLE 1—PROJECTED TECHNICAL ASSISTANCE AND TRANSFER PAYMENTS, FY 2014–FY 2018<sup>1</sup>

	NRCS technical assistance (million \$)	Transfer payment (million \$)	Public costs (million \$)	Private costs (million \$)	Total costs (million \$)
FY 2014 .....	364.5	985.5	1,350.0	657.4	2,007.4
FY 2015 .....	432.0	1,168.0	1,600.0	779.2	2,379.2
FY 2016 .....	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2017 .....	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2018 .....	472.5	1,277.5	1,750.0	852.2	2,602.2
Total .....	2,160.0	5,840.0	8,000.0	3,896.0	11,896.0

<sup>1</sup> Based on a historical average participant cost share of 40 percent and a historical average technical assistance share of 27 percent.

#### RIA Conclusions

Program features of EQIP except for the increase in wildlife focus remain essentially unchanged from the 2008 Farm Bill. The increased funding over the period of FY 2014 to FY 2018 will increase the amount of conservation applied by agricultural producers to support continued improvement in the natural resource base—soil, water, air, and wildlife; and mitigate agriculture's potentially adverse effects on the environment. The statutory requirement that at least 5 percent of available EQIP funding be targeted to practices which address wildlife habitat will be met by focusing a portion of the funding on applications that address wildlife resource concerns.

#### Comments Invited

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about the changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any

recommended changes, and include supporting data and references to statutory language. All comments received on or before the closing date for comments will be considered. This regulation may be changed because of the comments received. The docket and associated comments, including any personal information provided, will be made available for public inspection at: [www.regulations.gov](http://www.regulations.gov).

#### Background

The Agricultural Act of 2014 (2014 Act) has reauthorized and amended the Environmental Quality Incentives Program (EQIP). EQIP is implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

Through EQIP, NRCS provides assistance to agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy and related natural resources on their land. Eligible lands include cropland, grassland, rangeland, pasture,

wetlands, nonindustrial private forest land, and other agricultural land on which agricultural or forest-related products or livestock are produced and natural resource concerns may be addressed. Participation in the program is voluntary.

The information below demonstrates how NRCS provides assistance through EQIP to enhance natural resources. The type of assistance NRCS provides includes:

- Technical and financial assistance to help producers change tillage practices that enhance soil resources by sustaining tilth, moisture control, nutrients and overall soil health.
- assistance to replace or improve the management of irrigation systems to conserve scarce water resources. EQIP is also used to help producers manage nutrient applications to protect water quality.
- assistance with managing grazing to assure adequate forage is available and to sustain plant biodiversity and protect rare species. These practices help

<sup>1</sup> Public costs include total technical assistance (TA) and financial assistance (FA) funds outlined

in the Congressional Budget Office's (CBO) scoring

of the 2014 Act. Private costs are out-of-pocket costs paid voluntarily by participants.

maintain watershed health and enhance water quality.

- assistance to help producers apply energy efficient practices that reduce energy consumption (*e.g.*, reduced tillage conserves fuel, energy efficient lighting).

- assistance to help producers implement conservation practices that sequester carbon or capture methane emissions and greenhouse gases which contribute to climate change.

- assistance to help producers implement over 160 conservation practices on their land to sustain and improve the health of natural resources and provide public benefits.

Under EQIP, NRCS provides technical and financial assistance to implement conservation practices in a manner that promotes agricultural production, forest management, and environmental quality as compatible goals; optimize conservation benefits; and help agricultural producers meet Federal, State, and local environmental requirements. Conservation benefits are reflected in the differences between anticipated effects of treatment in comparison to existing or benchmark conditions. Differences may be expressed by narrative, quantitative, visual, or other means. Estimated or projected impacts are used as a basis for making informed conservation decisions by applicants and NRCS to help determine which projects to approve for EQIP assistance. While NRCS currently lacks data with which to quantify the impacts, it will investigate ways to quantify the incremental benefits obtained from this program.

NRCS first allocated \$130 million in EQIP funds in 1996. Since the program began through fiscal year (FY) 2013, NRCS has entered into 559,275 contracts to provide over \$9.8 billion in financial assistance to help agricultural producers apply conservation practices. The agency has evaluated 18 years of program implementation and has assessed opportunities to improve program administration. The changes in this interim rule are the result of this evaluation and the statutory changes authorized by the 2014 Act.

Section 2203 of the 2014 Act consolidated the Wildlife Habitat Incentive Program (WHIP) purposes into EQIP by revising section 1240B(f) and (g) of the EQIP statute to authorize at least 5 percent of program payments for practices targeted to benefit wildlife habitat, including conservation practices that support the restoration, development, and improvement of wildlife habitat on eligible land.

The EQIP statute requires the agency to the greatest extent practicable, to

group applications of similar crop or livestock operations for evaluation purposes or otherwise evaluate applications relative to other applications for similar farming operations. NRCS utilizes funding pools to meet this requirement and to target EQIP funding to priority resource concerns such as for the development of wildlife habitat or for water quality issues associated with animal feeding operations. Based upon priorities established with recommendations by State Technical Committees, priorities identified in state, regional or national plans and initiatives, and from reports of at-risk wildlife species and designations of threatened or endangered species, State Conservationists allocate available funds to a funding pool where applications from eligible producers compete.

Each application submitted for consideration in a given funding pool is ranked using evaluation criteria which provide a relative score that reflects the expected environmental benefit of the proposed project. State Conservationists also have the authority to prioritize applications for ranking which results in only the highest priority applications being ranked and considered for funding. Applications are accepted from producers on a continuous basis; however NRCS announces funding cut-off deadlines where all ranked applications within a funding pool are considered for funding based upon the ranking scores and availability of funds. Nearly all funding pools are established each fiscal year to address identified resource priorities, have multiple applicants to compete for limited funding, and meet legislative intent to address priority issues in a cost effective process. Each fiscal year, State Conservationists publish program priorities, available funding pools and associated ranking criteria to State program Web sites available at: <http://www.nrcs.usda.gov/wps/portal/nrcs/sitenav/national/states/>. State Conservationists are required to allocate funds to each application pool and may adjust funding between pools to address shortages or to redistribute surplus funds. Legislatively created funding levels such as the requirement to provide at least 60% of the funding for livestock and 5% of the funding for wildlife, are met as national goals through funding pool opportunities established by State Conservationists.

The changes made by the 2014 Act include, but are not limited to:

- Eliminating the requirement that contract must remain in place for a minimum of one year after last practice

implemented, but keeps the requirement that the contract term is not to exceed ten years;

- Consolidating elements of WHIP into EQIP and repeals WHIP authority, and establishing for each year of FY 2014 to FY 2018 that at least 5 percent of available EQIP funds will be targeted for wildlife-related conservation practices;

- Replacing rolling six-year payment limitation with payment limitation for FY 2014 to FY 2018;

- Requiring Conservation Innovation Grants (CIG) reporting no later than December 31, 2014, and every two years thereafter;

- Establishing the payment limitation at \$450,000 and eliminates the payment limitation waiver authority;

- Modifying the special rule for foregone income payments for certain associated management practices and resource concern priorities;

- Increasing the advance payments available to eligible historically underserved participants to purchase material or contract services from 30 percent to up to 50 percent;

- Providing flexibility for repayment of advance payment if not expended within 90 days;

- Authorizing funding for EQIP at:
  - \$1,350,000,000 for FY 2014
  - \$1,600,000,000 for FY 2015
  - \$1,650,000,000 for FY 2016
  - \$1,650,000,000 for FY 2017
  - \$1,750,000,000 for FY 2018
- Providing that EQIP funding remains available until expended.

The fundamental purpose of the program, assisting agricultural producers to implement conservation practices to provide environmental benefits, has not changed. Revisions to the program have focused primarily on expanding participation among historically underserved populations, including special priority for beginning agricultural producers and socially disadvantaged producers with preference provided under these special priorities for individuals who are veteran farmers or ranchers. The interim rule adjusts the program regulations to correspond to new statutory language. It also includes changes to streamline program implementation and make the participant's contract responsibilities clearer and more transparent. NRCS is also removing definitions for terms that are not used in the regulation and making other editorial adjustments.

#### Summary of Changes to EQIP Made by the 2014 Act

The regulation is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and

Subpart C—General Administration. The basic structure of the regulation has not changed; however, NRCS is moving the sections related to conservation practices and technical service providers (TSP) to Subpart A from Subpart B. Below is a summary of the changes made to each subpart based on the changes made to EQIP by the 2014 Act.

#### Part 1466, Subpart A—General Provisions

Section 1466.1, “Applicability,” sets forth the purpose, scope, and objectives of EQIP. Pursuant to section 2208 of the 2014 Act, the interim rule updates § 1466.1 to clarify those eligible program applicants and applicable regulations for contracts enrolled in EQIP prior to the effective date of the 2014 Act are not impacted by changes made by the act.

Section 1466.2, “Administration,” describes the roles of NRCS, State Technical Committees, and local working groups. The 2014 Act amendments did not affect the regulatory provisions at § 1466.2. However, NRCS added reference to Tribal Conservation Advisory Councils as a contributor to the locally led conservation effort.

The 2014 Act identifies EQIP as a covered program under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the 1985 Act and authorizes the Chief to waive nonstatutory discretionary provisions and operational procedures where the Chief determines the waiver will further the purposes of EQIP. RCPP operates through the authority of other NRCS conservation programs and provides specific authority for NRCS to adjust nonstatutory discretionary provisions. Therefore, NRCS is adding language to this section of the CFR to incorporate these changes. This language is needed to facilitate RCPP implementation using EQIP in RCPP partner project areas.

Section 1466.3, “Definitions,” sets forth definitions for terms used throughout this regulation. NRCS is amending several definitions to conform to the 2014 Act amendments, including the consolidation of WHIP, and to address other administrative matters. Specifically, this interim rule amends § 1466.3 by adding or modifying the following definitions: “Conservation benefit” means “the improved condition of a natural resource concern resulting from the implementation of a conservation practice.”

NRCS amends the definitions of “producer” and “applicant” to remove an incorrect citation. In the interim rule published January 15, 2009, NRCS

amended the definition of “applicant” to include the Food, Conservation, and Energy Act of 2008’s (2008 Act) terminology but kept the reference to an “agricultural or forestry operation as defined in part 1400 of this chapter.” The definition of “producer” is clarified and revised to remove reference to 7 CFR part 1400.

“*Producer*” means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

“*Applicant*” means a producer who has requested in writing to participate in EQIP.

NRCS amends the definition of “at-risk species” to incorporate the definition used in the WHIP regulation at 7 CFR 636.3.

NRCS adds and defines the new term, “veteran farmer or rancher,” consistent with the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

NRCS amends the term “National Organic Program” to include the reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*). The 2014 Act combined the statutory definition of the National Organic Program into the statutory definition of “organic system plan” by adding the statutory reference to the definition of “organic system plan” and removing the separate definition. NRCS maintains the separate definition for the National Organic Program in the regulation for clarification purposes.

NRCS amends the term “organic system plan” to incorporate the statutory reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*). The organic system plan is defined as a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The organic system plan includes written plans concerning all aspects of agricultural production or handling.

NRCS also adds a definition for “wildlife habitat” to more fully incorporate WHIP purposes into EQIP implementation. This new definition corresponds with the definition of “wildlife habitat” used at 7 CFR part 636.

Section 1466.6, “Program Requirements,” (previously numbered § 1466.8) sets forth land and applicant eligibility and the amount of EQIP funding to be used for livestock production and historically underserved producers. NRCS updates § 1466.6

consistent with the updates made to the definitions at § 1466.3.

Paragraphs (d) and (e), which address funding thresholds, have been removed. The funding threshold that at least 60 percent of EQIP assistance be targeted to conservation practices related to livestock production and the 5 percent funding pool for beginning farmers or ranchers and socially disadvantaged farmers or ranchers are established by statute and are binding requirements upon the NRCS. Agency policy requires NRCS State Conservationists to establish at least one funding pool for eligible beginning farmers or ranchers and one funding pool for socially disadvantaged farmers or ranchers. This allows applicants meeting these requirements to compete for EQIP funds separately from all other program opportunities. Thus, regulatory provisions are not necessary in order to give these provisions effect. Similarly, the 2014 Act requires that at least 5 percent of EQIP assistance be targeted towards conservation practices with a specific purpose related to wildlife habitat. NRCS will track this new funding requirement by identifying in its contract data base those conservation practices where wildlife habitat is the primary purposes. Out of more than 160 existing conservation practice standards, 16 have wildlife habitat as a primary purpose and approximately another 45 standards are often used to benefit wildlife. Examples of standards with a primary wildlife focus include:

- **Early Successional Habitat Development/Management**—used for early successional species such as the Golden Winged Warbler or New England Cottontail. This practice standard includes planting and vegetation management.
  - **Wetland Restoration**—used to develop habitat for the variety of wetland-dependent species, from amphibians to migratory waterbirds. This practice standard includes structural, grading, planting, and water management.
  - **Stream Habitat Improvement and Management**—used for many aquatic species, including salmon. This practice standard includes instream work such as building redds, pools and riffles, establishing woody debris, and vegetation management.
  - **Upland Wildlife Habitat Management**—used often in a system of practices for a wide variety of terrestrial species. Often, NRCS adds this conservation practice to a conservation plan to ensure other practices (e.g., fence) are wildlife-friendly.
- Additionally, other practices are used in certain situations to accomplish

specific wildlife objectives. Reducing sedimentation often improves aquatic habitat. Pasture and hay land planting, fencing, and ponds can provide recreational benefits (Smith, 1996). The NRCS Prescribed Grazing (528) conservation practice standard is essential in facilitating the development and maintenance of habitat to benefit the lesser prairie-chicken, and the Gunnison sage grouse, both listed as threatened under the Endangered Species Act. Every plan developed by NRCS under either the Lesser Prairie Chicken Initiative or the Sage Grouse Initiative, where grazing will occur, requires the use of Prescribed Grazing. To accommodate situations such as this, the Chief may also evaluate additional conservation practices related to NRCS landscape wildlife initiatives in determining whether 5 percent of EQIP funding was used to benefit wildlife. State Conservationists have authority to focus EQIP to meet locally established priorities to target at-risk species and listed species based upon input from technical committees and to determine the specific context or scenarios under which the practices must be applied to achieve the desired wildlife benefits.

Due to other changes in the interim rule, the provisions related to the EQIP plan of operations section that previously appeared at § 1466.9 now appear at § 1466.7. Section 1466.7 now describes the requirements of the EQIP plan of operations, which is a component of the EQIP contract. Section 2204 of the 2014 Act replaced the term “environmental benefits” with “conservation benefits.” Therefore, NRCS amends the provisions to replace the term “environmental objectives” with the term “conservation objectives” every place it occurs in the section.

Due to other changes in the interim rule, the provisions related to the EQIP plan of operations section that previously appeared at § 1466.10 now appear at § 1466.8. Section 1466.8, “Conservation practices,” now describes how NRCS determines eligible conservation practices. NRCS makes a minor editorial change in paragraph (a) to clarify that the term “practice” used in the second sentence means “conservation practice” as defined in § 1466.3. Additionally, NRCS amends paragraph (d) to reference “conservation benefits” instead of “environmental benefits” consistent with the statutory change made by section 2204 of the 2014 Act. Finally, NRCS adds a new paragraph (e) to ensure that State Conservationists target EQIP funds to wildlife habitat consistent with the additional wildlife habitat purposes incorporated into EQIP by section 2203

of the 2014 Act. Technical Service Providers (TSP) provisions previously numbered § 1466.11 are now at located at § 1466.9.

#### **Part 1466, Subpart B—Contracts**

Section 1466.20, “Application for contracts and selecting applications,” addresses how producer applications are submitted and selected for funding. NRCS updates the language throughout § 1466.20 to reference “conservation benefits” instead of “environmental benefits,” consistent with the amendment made by section 2204 of the 2014 Act. NRCS also updates the terms used throughout § 1466.20 to correspond to the updates to the terms in § 1466.3 Definitions. To reduce administrative burden and improve timely delivery of program benefits, NRCS also removes the nonstatutory requirement in § 1466.20(b)(5) that EQIP applications \$150,000 or greater require the review and approval of the Regional Conservationist. Since the term Regional Conservationist is not used in any other section of this rule other than in regards to the above requirement to be removed, the definition is also removed from § 1466.3.

Section 1466.21, “Contract requirements,” identifies elements contained within an EQIP contract and the responsibilities of the participant who is party to the EQIP contract. This section also addresses EQIP contract funding limitations. To receive payment, an applicant must enter into an EQIP contract. The EQIP contract identifies all financially supported conservation practices to be implemented, their timing and sequence, and the operation and maintenance (O&M) needed to maintain the conservation practice for its intended lifespan. NRCS amends paragraph (b)(2) to change the duration of the term of an EQIP contract to correspond with the change to the length of the contract term made by section 2203 of the 2014 Act. In particular, an EQIP contract will have a term for no more than ten years. Since EQIP only makes payment for the implementation of conservation practices, and does not provide annual or rental payments, EQIP contracts are not renewed. NRCS amends this section by replacing “within the agricultural or forestry operation” with “on the enrolled land” consistent with the change made by section 2205 of the 2014 Act that replaced “farm, ranch, or forest” with “enrolled” at section 1240D of the EQIP statute.

NRCS continues to use a contract funding limitation to manage program payment limitations. Consistent with

statutory payment limitation requirements, NRCS retains the administrative authority to limit the maximum contract amount to equal the person/legal entity payment limitation. Specific payment limitations are addressed in § 1466.24, EQIP Payments.

Section 1466.22, “Conservation practice operation and maintenance,” addresses the participant’s responsibility for conservation practice operation and maintenance. NRCS replaces the term “environmental benefits” with “conservation benefits” consistent with section 2204 of the 2014 Act.

Section 1466.23, “Payment rates,” addresses payment rates and payment eligibility. NRCS replaces the reference to “environmental benefits” with “conservation benefits” at paragraph (a)(4), consistent with section 2204 of the 2014 Act. Section 2203 of the 2014 Act revises the list of factors that NRCS may consider significant when determining the amount and rate of payment for income foregone to: Soil health; water quality and quantity improvement; nutrient management; pest management; air quality improvement; wildlife habitat development, including pollinator habitat; and invasive species management. NRCS revises this section to incorporate these changes made by section 2203.

For participants who NRCS identifies meet the definition of historically underserved producers, in accordance with § 1466.3, NRCS may award the applicable payment rate and an additional payment rate that is not less than 25 percent above the applicable payment rate, provided this increase does not exceed 90 percent of the estimated incurred costs and 100 percent of income foregone associated with the conservation practice. NRCS amends this section to clarify that veteran farmers or ranchers may also be awarded the special payment rate for historically underserved producers consistent with the addition of veteran farmers and ranchers by section 2203 of the 2014 Act.

NRCS also revises this section to clarify that NRCS will reduce the applicable payment rate to which a producer is entitled if the producer receives financial contributions for the implementation of a conservation practice from other USDA sources. The 2008 Act had revised section 1240B(d)(5) of the 1985 Act to specify that any non-Federal assistance that a producer receives should not impact the level of financial assistance a producer receives for EQIP participation. The January 2009 interim final rule had not

updated this; therefore, NRCS is making the adjustment in this interim rule.

Section 1466.24, “EQIP payments,” provides direction on payment eligibility and payment limitations. Section 2206 of the 2014 Act amended section 1240G of the 1985 Act to replace the current \$300,000 payment limitation with a \$450,000 payment limitation and to apply the new payment limitation for a specific time period of FY 2014 through FY 2018, replacing the rolling 6-year period. NRCS amends paragraph (a) to incorporate this specific payment limitation for EQIP payments received during FY 2014 through FY 2018. The 2014 Act did not change the payment limitations associated with EQIP support of organic operations or those transitioning to organic production per section 1240(B) of the 1985 Act (\$20,000 per year or \$80,000 during any six year period). Therefore, the Agency will enforce both payment limitations applicable to all program participants as cited in § 1466.24.

Section 1466.24 is also to use simplified regulatory references, such as replacing “part 1400 of this chapter” with “7 CFR part 1400.” Paragraph (c)(10) incorporates the flexibility provided by the amendments made by section 2203 of the 2014 Act to how advance payments may be made to historically underserved producers. In particular, advance funds paid to program participants must be expended within 90 days from receipt of funds or returned to NRCS within a reasonable time as determined by NRCS and eligibility for advance payment is contingent upon the participant obtaining an NRCS approved practice design.

Section 1466.27, “Conservation Innovation Grants,” sets forth the policies and procedures related to awarding grants under the CIG provision at section 1240H of the 1985 Act. Section 2207 of the 2014 Act added a reporting requirement for NRCS. In particular, NRCS must report not later than December 31, 2014, and every two years thereafter, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of projects funded under the section, including funding awarded; project results; and incorporation of project findings, such as new technology and innovative approaches, into NRCS conservation efforts. A new paragraph has been added at § 1466.27(j) to address this reporting requirement.

#### **Part 1466, Subpart C—General Administration**

Subpart C of the EQIP regulation addresses a participant’s responsibility to comply with regulatory measures, to provide NRCS access to lands enrolled in the program for compliance monitoring during the term of the contract and other general program matters. The 2014 Act changes do not impact the regulatory provisions at Subpart C.

#### **Summary of Changes to EQIP for Administrative Clarification and Reducing Administrative Complexity**

NRCS is clarifying a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the EQIP rule by clarifying and streamlining the regulation to focus upon only those provisions that relate to conservation program participants rights and responsibilities under the programs. Topics are organized below in alphabetical order.

#### **Animal Feeding Operations (AFOs) (§§ 1466.3, 1466.7, and 1466.21)**

Section 1240E(a)(3) of the 1985 Act authorizes payments for AFOs provided that the producer submits a plan of operations that provides for development and implementation of a comprehensive nutrient management plan (CNMP), if applicable. The 2002 Act removed an existing restriction for EQIP to provide assistance to large confined livestock feeding operations. Neither the 2008 Act nor the 2014 Act made modifications to these provisions. However, to improve the clarity of the regulation regarding AFO CNMP requirements, NRCS is updating the EQIP rule to incorporate a definition for AFOs and is revising the definition of CNMP to state that these are conservation plans developed specifically for an AFO.

Consistent with these updates, NRCS is revising § 1466.7, EQIP plan of operations, to clarify that if an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period which will be verified by NRCS. Finally, § 1466.21, Contract requirements, is being updated to state that a CNMP should be implemented when an EQIP contracts includes an animal waste facility on an AFO.

#### **Conservation Innovation Grants (§ 1466.27)**

The CIG component of EQIP stimulates the development and

adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. The regulations for CIG are found at 7 CFR 1466.27. CIG grants are administered in accordance with Departmental and government-wide requirements for financial assistance awards.

NRCS is adding a definition for cooperative agreement to clarify that both grant agreements and cooperative agreements may be used. NRCS is also removing the provisions at 7 CFR 1466.27(c)(1) and 1466.27(f) that require CIG funding opportunities to be published in the **Federal Register**. Since this provision was first incorporated, the Federal Government adopted the Grants.gov portal through which funding opportunities are announced. Therefore, such announcements are no longer required to be published in the **Federal Register**. NRCS has also made several adjustments to this section to explain the financial responsibilities of a grantee. NRCS also deleted paragraphs (h)(5) and (6) referring to internal agency processes for state-level grants. Subsections (j) and (k), related to patents and inventions and violations, were struck because the matter discussed is covered in other parts of the CFR.

#### **Consultation With Conservation Districts (§ 1466.26)**

Section 1466.26 authorizes NRCS to consult with conservation districts in contract termination decisions. However, section 1619 of the 2008 Act imposes limitations on the disclosure of certain types of information provided by an agriculture producer. Therefore, this section has been removed though NRCS will continue to work closely with its conservation district partners in the implementation of EQIP and its other conservation programs.

#### **Definition of Terms (§ 1466.3)**

The definition of “beginning farmer or rancher” has been revised to reflect the authority of the Food Security Act of 1985 and amendment from the 2008 Act which added nonindustrial private forest land (NIPF) as specifically eligible for EQIP. The revision is also consistent with Departmental regulation. The revised definition now reads as:

*Beginning farmer or rancher* means a person or legal entity who:

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who

will materially and substantially participate in the operation of the farm or ranch.

(2) 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.

(3) 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.

*Conservation practice:*

NRCS has amended the definition of conservation practice to clarify that approved conservation practices are listed in the NRCS Field Office Technical Guide.

*Estimated income foregone:*

For clarification, NRCS has expanded the definition to clarify the elements that are used in its calculation. Therefore, the definition now reads: “*Estimated income foregone* means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice. Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.”

**Environmental Credits (§ 1466.36)**

NRCS recognizes the increased interest among agricultural producers to be able to participate in environmental service markets. The policy in this section is not new. Minor editorial changes are made to § 1466.36.

**Irrigation History Requirement (§ 1466.8—as Renumbered)**

NRCS has received numerous comments since publication of the EQIP

interim final rule in January 2009 related to the topic of irrigation. These comments have focused upon the irrigation history requirement in EQIP that is used to determine whether proposed irrigation related practices will result in water conservation or water savings.

A requirement of EQIP is to provide a positive conservation benefit to address a resource concern, which for the purpose of a cropland irrigation practice, is water conservation. Whether water conservation objectives have been achieved is often determined through a calculation of water savings based upon the difference in amount of water used before and after implementation of the irrigation practice, thus providing an estimate of water saved or conserved.

Without evidence of existing irrigation, it is difficult to justify funding to implement a water conservation practice if there is no documentation of past water use and therefore savings. Funding practices to facilitate new irrigation practices that do not currently exist would use more water than previously and tend to defeat the purpose of the program to provide a conservation benefit.

Historically, USDA and NRCS conservation programs have received overall support for the rule and policy requirements to provide evidence that land has been irrigated 2 of the past 5 years to ensure that both a natural resource concern will be addressed by EQIP assistance and that EQIP assistance does not result in adverse impacts to aquifer depletion or surface streams experiencing decreased flow. However, the strict irrigation history requirement may have inadvertently disadvantaged some individuals or groups and there may be specific situations where adjustment of the requirement may be appropriate.

Some producers, especially limited resource and socially disadvantaged producers, cannot benefit fully from EQIP assistance because of difficulty meeting this irrigation history requirement for reasons beyond their control. There are situations where producers cannot document historical use of irrigation on some lands, such as Tribal lands, and therefore, cannot meet or document the irrigation history requirement. Additionally, producers who do not have extensive structural irrigation delivery systems use non-mechanized irrigation methods and do not maintain records for these irrigation applications.

Between October 2010 and January 2011, NRCS participated in seven Interagency Tribal consultation meetings held across the nation. The

effort was coordinated by the USDA Office of Tribal Relations and provided an opportunity for Tribal leaders to comment in person on the programs authorized by the Food, Conservation, and Energy Act of 2008. NRCS staff presented program overviews to attending Tribal Representatives that provided them with a better understanding of program details.

The EQIP irrigation history requirement was among the top ten issues raised by the Tribal representatives during the Interagency Tribal consultation meetings. The Tribal representatives identified that the irrigation history requirement raised barriers to Tribal participation in EQIP due to drought, incomplete irrigation pipelines, or loss of water use rights or access to water.

Therefore, NRCS is modifying the EQIP regulation to address the irrigation history requirement through introduction of a waiver provision. In particular, NRCS has determined that it is appropriate, pursuant to the Secretary's authority under 16 U.S.C. 3844 to address barriers to participation by historically underserved producers, to incorporate a limited waiver to the irrigation history requirement under the EQIP regulation.

NRCS believes that a narrowly-tailored waiver provision will address these participation barriers in a manner that ensures EQIP continues to meet its statutory purposes through fully addressing natural resource concerns on eligible land. The new waiver provision will address two different circumstances described more fully below: (1) one circumstance is particular to limited resource and socially disadvantaged producers, including individual Indian producers; and (2) one circumstance is particular to Indian lands, as defined by the EQIP regulation, that have been designated as “permanently irrigable” “by the Bureau of Indian Affairs.”

For circumstances related to limited resource and socially-disadvantaged producers, this rule provides that the NRCS Chief may waive the irrigation history requirement where, for reasons beyond the control of the producer, the producer could not irrigate the land but there exists an identified natural resource concern. More specifically, the water-conservation or irrigation-related conservation practice must address the natural resource concern through the successful and cost-effective implementation of other practices that address soil quality and erosion resource concerns, and all other program requirements can be met.

The waiver authority will only be available to limited resource and

socially-disadvantaged producers, including individual Indian tribal producers, who wish to install an efficient irrigation system as a means to assist with the adoption of sustainable agricultural production methods, as determined by the Chief, and such adoption will not adversely impact limited surface water or groundwater supplies. Sustainable production methods may include the establishment of cover crops and irrigation water management as part of no-till production or organic production systems needed to ensure a positive trend in the soil condition index. To ensure that the waiver does not result in converting land into more intensive uses such as converting pasture to cropland, this rule also provides that a producer who seeks a waiver must also be able to establish that the land has been in active agricultural production (cropped, hayed, or grazed) four of the last six years.

NRCS establishes these limitations for availability of the waiver based on several reasons. First, EQIP eligibility requires that any practice funded will address identified natural resource concerns related to agricultural production. Therefore, absent documentation of irrigation history, the proposed irrigation practice must directly facilitate the successful implementation of a practice that addresses an identified natural resource concern (such as soil quality improvements or erosion control) as part of a resource management system.

To minimize any potential negative impacts upon surface and ground water supplies, NRCS will evaluate the impact of granting a waiver, both individually and cumulatively, prior to approval and incorporate any necessary limitations to ensure that such impact is minimized. Criteria used to evaluate the potential impact of a waiver on existing water supplies will be developed by NRCS, and the agency is using this rulemaking as an opportunity to obtain public input on the availability of a waiver and the criteria for granting and evaluating the impact of such waivers.

For example, the impacts upon water supplies could be based on, but not necessarily limited to, the following sample criteria:

- For groundwater systems, the aquifer must not be declining in elevation or in yield;
- For surface water diversions east of the 100th meridian, a legal right to use surface water must be in possession of the applicant. The surface water source would need to be documented as meeting all other legal water rights 8 out of 10 of the last years; and

- For surface water diversions west of the 100th meridian, the surface water source must be shown to have met all state-designated beneficial uses for which legal rights are held 5 out of the last 10 years.

Waivers will not be granted in areas that have been subject to water shortages. Additional criteria may include the extent of the acreage being placed under irrigation, and NRCS seeks specific public comment about whether acreage limitations should also be amongst the criteria applied to limit the potential impact to existing water supplies. For example, NRCS could limit its approval of waivers to where less than 50 acres of cropland are to be irrigated with an efficient irrigation system meeting NRCS practice standards. The 50-acre limitation criteria would be based upon the standard field size that can be irrigated with a center pivot.

Finally, NRCS establishes the four of the last six years agricultural production history as a means to ensure that land is not converted into more intensive uses that significantly impact water resources, and is patterned after recognized statutory cropping history requirements under the Conservation Reserve and Conservation Stewardship Programs.

Additionally, NRCS may also authorize a waiver of the irrigation history requirement for circumstances faced by federally recognized Indian Tribes. The Bureau of Indian Affairs (BIA) has categorized various Tribal lands as “permanently irrigable.” These lands include lands that were known historically to be previously irrigated, or where there were plans to establish irrigation facilities though approved projects that were never constructed. Another situation is that the planned irrigation practices were constructed, but were inappropriate for the associated management practices or were not finished completely, and thus were not utilized for the intended purpose or need.

In some circumstances, these lands were previously irrigated, but for various reasons, deteriorated where irrigation delivery became unfeasible or resulted in litigation concerning water rights which prevented the Indian tribe’s lands from actually being irrigated. Often, affected producers on these Tribal lands are required to and continue to pay operation and maintenance fees for the irrigation delivery facilities even when no irrigation water is being delivered. These lands, once water rights and delivery issues have been resolved, can and likely will be under irrigation

production and meet the intent of statute to conserve and efficiently use available water.

Again, to minimize any potential increased negative impact upon surface and groundwater water supplies, NRCS will evaluate the impact of granting a waiver, both individually and cumulatively, prior to approval and incorporate any necessary limitations to ensure that such impact is minimized. Criteria used to evaluate the potential impact of a waiver on existing water supplies will be developed by NRCS, and the agency is using this rulemaking as an opportunity to obtain public input on the availability of a waiver and the criteria for granting and evaluating the impact of such waivers. Waivers will not be granted in areas that have been subject to water shortages during the previous full irrigation season.

When a waiver is being considered for land proposed for the EQIP program that has been designated permanently irrigable by the BIA, the impacts upon water supplies could be based on, but not necessarily limited to, the following sample criteria:

- Whether water rights are secured and legal;
- For sources of irrigation from groundwater, the aquifer is not declining in either elevation or yield. There may be situations where although there is a declining aquifer, a Tribal entity has a water right that is senior to many of the other groundwater rights. These cases will be evaluated individually; and
- For surface water sources, the Tribal water rights are such that they would have resulted in full-volume delivery 5 out of the last 10 years.

Such criteria may also include the extent of the acreage being placed under irrigation, and NRCS also seeks specific public comment about whether acreage limitations should also be amongst the criteria applied to evaluating whether a waiver on Tribal land is appropriate. For example, NRCS could limit the waiver to 200 acres/Tribe, basing the 200-acre limitation upon allowance of four of the standard 50-acre fields that can be irrigated with a center pivot. NRCS believes that such criteria could focus EQIP assistance to Tribal operations that do not have the financial resources necessary to implement water conservation measures on their own and thus EQIP assistance is needed.

EQIP’s water conservation purposes can be furthered by granting a waiver for irrigation-related assistance on Indian lands classified as permanently irrigable with existing irrigation-related facilities, and where the producer has been paying

operation and maintenance fees for irrigation water delivery.

NRCS believes the new waiver with these two categories of producers will balance the need for EQIP assistance by producers who have not been able to establish an irrigation history with ensuring that implementation of a waiver does not have an unintended consequence of increasing depletion of limited surface or groundwater resources. NRCS requests public comment on the availability of a waiver and the criteria for granting such waivers. This rulemaking amends the EQIP regulation by incorporating a waiver provision at 7 CFR 1466.8(c).

#### **Outreach (§ 1466.5—as Renumbered)**

To improve clarity of this interim rule, NRCS has amended the language in § 1466.5 (as renumbered) to read as follows:

“NRCS will establish program outreach activities at the national, State, Tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders. NRCS provides outreach so as not to limit producer participation because of size or type of operation or production system, including small-scale, specialty crop and organic production.”

NRCS provides further guidance in agency policy that special emphasis will be made in all information activities to provide conservation assistance, program outreach, and access to limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, small-scale farmers or ranchers, beginning farmers or ranchers, Tribal members, Alaska Natives, Pacific Islanders, producers with disabilities, veteran farmers or ranchers, and other producers with historically low participation rates in conservation programs. Procedures will adhere to national outreach policy guidance in *GM Title 230 Part 406*. Special emphasis outreach efforts could include, but not be limited to:

- (a) Establishing special outreach activities at the national, State, Tribal, and local levels; and
- (b) Providing special accommodations, to the extent possible, to assure that producers are aware,

informed, and have access to information and assistance, such as:

- (1) Using language spoken by the intended audience;
- (2) Using appropriate media sources to reach the intended audience; and
- (3) Partnering with nongovernmental organizations to assist in reaching more potential applicants.

#### **Practice Costs, Payment Rates, and Payment Schedules (§ 1466.23)**

The process for documenting estimated incurred costs for conservation practices implemented through program support is an iterative process that begins with technical requirements of the practice standard, development of geographically based regional scenarios, identification of associated components and costs, and a quality control process for review and publication of resulting payment schedules used to support final payment rates. The process for documentation of estimated costs in payment schedules provides the following benefits to ensure accurate and timely delivery of program benefits:

- (i) Provide transparency and timely payment rate information to program applicants and agency partners,
- (ii) Ensure that payment schedules are consistent with program authority,
- (iii) Provide a consistent, reliable, and defensible method for documenting eligible costs,
- (iv) Provide flexibility which reflects cost variation across the Nation,
- (v) Uses established and accepted economic geographic areas aligned with States and regions based on farm employment data, crop costs, and other economic factors,
- (vi) Ensure payment rates and financial assistance are consistent with the definition, purpose, and requirements of approved conservation practice technical standards,
- (vii) Provide producers, through use of standardized cost estimates rather than detailed invoicing, simpler program application, contract administration, and request for program payments, and
- (viii) Support agency efforts to reduce State and field staff workload associated with administrative matters allowing more time for conservation planning, technical assistance, and practice implementation.

NRCS believes that payment rates are best established through a nationally guided payment schedule process with State Conservationists, in consultation with the State Technical Committee, Tribal Conservation Advisory Council, and local working groups setting payment percentages which determine

the final payment rate. The current regulation provides that “Practice payment rates greater than 50 percent for estimated costs incurred . . . are to be approved by the Chief or designee.” This provision related directly to previous statutory authority to make cost-share and incentive program payments. The 2008 Farm Bill eliminated authority for cost-share and incentive payments and established maximum payment limitations of 75 percent of estimated incurred costs and up to 90 percent of estimated incurred costs for historically underserved participant program payments. As a result the need for establishing cost-share percentages to calculate contract payments was eliminated. The nationally guided payment schedule process establishes controls to assure that these payment limitations are not exceeded in determination of program payment rates and therefore the need for agency review of these percentages are no longer needed.

NRCS makes a revision to the rule to clarify when payment rates may be reduced as a result of the agency entering into a formal agreement with a partner who provides payments to producers participating in EQIP. Section 1466.23(b)(4) is added as follows: “When the agency enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief must adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice.”

NRCS makes a technical correction in its cross-reference in § 1466.24(c)(1) to cite correctly to subparts in 7 CFR part 1400.

#### **State Technical Committee as Identified in the EQIP Rule (§ 1466.2)**

In order to clarify the role of the State Technical Committee and further align the EQIP rule with the State Technical Committee rule (7 CFR part 610), NRCS has revised § 1466.2(b).

#### **Technical Service Providers as Appearing in the EQIP Rule (§ 1466.9—as Renumbered)**

NRCS is making several adjustments to ensure that its references to TSPs in the EQIP regulation are consistent with the TSP regulation at 7 CFR part 652 by stating examples of eligible services. Additionally, due to other changes in the interim rule, the provisions that previously appeared at § 1466.11 regarding TSPs will now appear at

§ 1466.9. NRCS also changed the definition of TSPs to clarify the process of becoming a TSP.

#### **Transparency (§ 1466.20)**

Government transparency is furthered by public access to various government documents and information. NRCS supports open government to the extent authorized by law. Several statutory provisions limit the disclosure of Federal information where the release of such information may adversely affect an individual's privacy or other confidential matters. In particular, release of EQIP documents is governed by the Freedom of Information Act (FOIA), the Privacy Act, section 1619 of the 2008 Act, and section 1244 of the 1985 Act. NRCS will provide as much transparency as possible concerning funding usage while adhering to the FOIA and Privacy Act requirements. Section 1619 of the 2008 Act prohibits NRCS from releasing any information specific to a producer's operation, practice, or the land itself in order to participate in USDA programs. NRCS will continue to aggregate information about EQIP including kinds of practices and extent and funding associated with contacts at the State and national levels. Section 1466.20(b)(6) of the EQIP rule specifies that NRCS will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in a State. At the national level, NRCS posts information concerning EQIP at: [www.nrcs.usda.gov/programs/EQIP](http://www.nrcs.usda.gov/programs/EQIP).

#### **Tribal Issues (Sections Throughout Interim Rule)**

Between October 2010 and January 2011, NRCS participated in seven interagency Tribal consultation meetings held across the Nation. The effort was coordinated by the USDA Office of Tribal Relations and provided an opportunity for Tribal leaders to comment in person on the 2008 Act programs. NRCS participated again in Tribal consultation meetings in April 2014.

In response, NRCS has made several adjustments to the EQIP rule. The term Tribal Conservation Advisory Council was added wherever applicable to more accurately portray relationships of these bodies in providing advice to the State Conservationist. The term Indian Tribes and Tribal were included throughout the regulation to ensure clarity in program delivery, and language was added to ensure more clarity concerning NRCS' relationship with the Bureau of Indian Affairs (BIA) at § 1466.6(b)(3). NRCS has also incorporated provisions

to clarify to that payment and contract limitations do not apply to Indian Tribes but apply to individual Tribal member(s) at § 1466.24(a). The removal of the maximum limitation for contracts with Indian Tribes facilitates the ability of NRCS to address the natural resource concerns faced by Indian producers on tribal lands by allowing the larger Tribal parcels with multiple producers to be administered under a single contract. NRCS anticipates removal of this barrier will improve efficiency and delivery of program benefits to Tribes.

#### **Other EQIP Adjustments**

The following changes to § 1466.3 definitions were made to clarify program administration and ensure consistency in program implementation:

- **Indian Tribe:** NRCS has included the word "pueblo" in the definition of Indian tribe. Although pueblo is encompassed in the term other organized group or community, NRCS is adding the term to provide additional clarity to the interim rule that pueblos are included as one of these recognized communities consistent with Departmental regulation.
- **Limited resource farmer or rancher:** NRCS amends the term, "limited resource farmer or rancher," by replacing the reference to "\$155,200" with "the current indexed value." Using data provided by the various Federal agencies, NRCS establishes the value used for determining limited resource farmer and rancher which is calculated each fiscal year to reflect inflation, income, agricultural prices, poverty levels, and other factors. Details regarding the kind of data used and formula calculations are found at <http://www.lrftool.sc.egov.usda.gov/About.aspx>. NRCS adjusts the EQIP definition to correspond with the definition used more widely throughout the Department. NRCS also adds clarity by identifying when a legal entity or joint operation meets the requirements to be considered a limited resource farmer or rancher.

- **Priority resource concern:** NRCS revises the term "priority resource concern" to align program terminology with other conservation programs administered by NRCS by clarifying that a priority resource concern is a "natural" resource concern.

- **Resource concern:** In order to be consistent with other NRCS financial assistance programs, NRCS has amended the definition for resource concern.

NRCS makes the following additional administrative changes:

#### **National Priorities—§ 1466.4**

Section 1466.4 National Priorities, identifies the national priorities for program implementation. Prior to the publication of the January 2009 interim final rule, NRCS identified these national priorities through public feedback in order to ensure that the stated national priorities reflected the most pressing natural resource needs. NRCS makes three minor adjustments to § 1466.4. The first is to add energy conservation as one of the resource concerns addressed through EQIP which was not specifically addressed in the January 2009 interim rule. Although energy conservation was included as a purpose for EQIP in the 2008 Act, at the time, neither the agency nor industry had developed the tools needed to develop plans and practices which address this concern. Pursuant to the 2008 Act's authorization of the use of EQIP to address on-farm energy conservation benefits, NRCS has implemented the "EQIP On-Farm Energy Initiative" to enable a producer to identify ways to conserve energy on the farm through an Agricultural Energy Management Plan, also known as an on-farm energy audit, and by providing financial and technical assistance to help the producer implement various measures and practices recommended in an on-farm energy audit. The other two changes are to replace "resource concern" with "natural resource concern" and clarifying that promotion of at-risk species habitat conservation includes the development and improvement of wildlife habitat. NRCS has established the national priorities to address natural resource concerns associated with enhancements to soil quality, water quality and quantity, plant health, energy conservation, wildlife habitat, air quality, and related resource concerns, that may be addressed through EQIP.

#### **National and State Allocation Management Sections—§§ 1466.5 and 1466.6**

NRCS is removing these two sections as they relate to internal fund allocation management which are internal agency administrative procedures and do not affect the rights and responsibilities of EQIP participants. NRCS has utilized a formula for allocation of EQIP funds to States based upon factors established at § 1466.5. Based upon both internal and external comment, NRCS recognized that the existing process did not adequately identify priority resource needs, the locally led process, or information available at the State level which could provide more

comprehensive data to make allocation decisions. In FY 2011, the agency developed a new allocation process based upon State-generated assessments of priority natural resource needs and associated work necessary to address identified resource concerns. These State-developed assessments, following national guidance to assure accuracy and consistency, were reviewed with partners, stakeholders, other agencies, and others to quantify resource needs, priorities, agency goals, workload and available resources, and program opportunities to support direct requests from State Conservationists. These requests were submitted to agency leadership for review, and final EQIP allocations were based upon all requests and needs. This approach provides flexibility to address nationally and locally important natural resource concerns and provides a more reliable and accurate estimate of each State's needs, which in turn can be used to better inform the allocation process. The Agency will use a nationally consistent method to document resource needs and provide a foundation for establishing priorities within States. Inputs may include National Resources Inventory (NRI) land use data, NRI soil erosion estimates, NRI Rangeland Resource Assessment rangeland health data, NRI CEAP soil organic carbon data, and various attributes from the Soil Survey Geographic (SSURGO) database. These and other data layers may be used to calculate critical acres by State and identified natural resource concerns.

#### §§ 1466.8 Through 1466.11

These sections are re-numbered in this interim rule to reflect the changes made by the removal of the administrative allocation sections. The provisions that previously appeared at §§ 1466.8 through 1466.11 are now found at §§ 1466.6 through 1466.9.

#### Conservation Practice Operation and Maintenance—§ 1466.22

In order to clarify NRCS operating procedures, NRCS has amended § 1466.22(c) to state as follows: "Conservation practices installed before the contract execution, but included in the contract to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and [Operation and Maintenance] agreement."

Finally, throughout 7 CFR part 1466, NRCS simplifies the regulatory cross-references by replacing language such as "part 1400 of this chapter" with "7 CFR part 1400."

#### Summary of Request for Comments

NRCS seeks general comments related to how to make the provisions easier to understand. In addition, NRCS seeks public comment related to the changes made to the EQIP regulation by this interim rule, including seeking comment:

- As identified in the Executive Summary, on how the agency should estimate the public value of conservation resulting from assistance provided through EQIP;
- as set out in Section 1466.3, on the definition of conservation benefits; and
- about the irrigation waiver requirement, and, about whether acreage limitations should also be amongst the criteria applied to limit the potential impact to existing water supplies, whether acreage limitations should also be amongst the criteria applied to evaluating whether a waiver on Tribal land is appropriate, and on the availability of granting such a waiver under certain conditions.

#### List of Subjects in 7 CFR Part 1466

Agricultural operations, Conservation practices, Conservation payments, Natural resources, Payment rates, Contract, Animal feeding operations, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife, and Forestry management.

#### Regulatory Changes

- For the reasons stated in the preamble, the Natural Resources Conservation Service and the Commodity Credit Corporation revise part 1466 of Title 7 of the Code of Federal Regulations (CFR) to read as follows:

### PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

#### Subpart A—General Provisions

Sec.

- 1466.1 Applicability.
- 1466.2 Administration.
- 1466.3 Definitions.
- 1466.4 National priorities.
- 1466.5 Outreach activities.
- 1466.6 Program requirements.
- 1466.7 EQIP plan of operations.
- 1466.8 Conservation practices.
- 1466.9 Technical services provided by qualified personnel not affiliated with USDA.

#### Subpart B—Contracts and Payment

- 1466.20 Applications for contracts and selecting applications.
- 1466.21 Contract requirements.
- 1466.22 Conservation practice operation and maintenance.
- 1466.23 Payment rates.
- 1466.24 EQIP payments.

- 1466.25 Contract modifications and transfers of land.
- 1466.26 Contract violations and terminations.
- 1466.27 Conservation Innovation Grants.

#### Subpart C—General Administration

- 1466.30 Appeals.
- 1466.31 Compliance with regulatory measures.
- 1466.32 Access to operating unit.
- 1466.33 Equitable relief.
- 1466.34 Offsets and assignments.
- 1466.35 Misrepresentation and scheme and device.
- 1466.36 Environmental credits for conservation improvements.

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839–8.

#### Subpart A—General Provisions

##### § 1466.1 Applicability.

(a) The purposes of the Environmental Quality Incentives Program (EQIP) are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits. Through EQIP, NRCS provides technical and financial assistance to eligible agricultural producers, including nonindustrial private forest landowners (NIPF) and Indian Tribes, to help implement conservation practices which address soil, water, and air quality; wildlife habitat; surface and groundwater conservation; energy conservation; and related resource concerns. EQIP's financial and technical assistance helps 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 planning and implementing conservation practices on eligible land.

(b) EQIP is available in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(c) Contracts enrolled into EQIP prior to February 7, 2014, are subject to the regulations in effect the date prior to February 7, 2014.

##### § 1466.2 Administration.

(a) The funds, facilities, and authorities of the CCC are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities where applicable.

(b) NRCS supports locally-led conservation by soliciting input from the State Technical Committee and the Tribal Conservation Advisory Council at the State level, and local working

groups at the county, parish, or Tribal level to advise NRCS on issues relating to EQIP implementation.

Recommendations from the State Technical Committee and the Tribal Conservation Advisory Council may include but are not limited to:

(1) Recommendation for program priorities and criteria;

(2) Identification of priority resource concerns;

(3) Recommendation of which conservation practices will be effective to treat identified priority resource concerns; and

(4) Recommendation of program payment percentages for payment schedules.

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under the Regional Conservation Partnership Program (RCPP), if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP.

Consistent with section 1271C(c)(3) of the 2014 Act, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

(d) NRCS may enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this part.

#### **§ 1466.3 Definitions.**

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

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

*Agricultural operation* means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator

in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

*Animal feeding operation (AFO)* means an agricultural operation where animals are kept and raised in confined situations. AFOs congregate animals, feed, manure, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures, fields, or on rangeland. An AFO is a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

*Animal waste storage or treatment facility* means a structural conservation practice, implemented on an AFO consistent with the requirements of a Comprehensive Nutrient Management Plan (CNMP) and Field Office Technical Guide (FOTG), which is used for storing, treating, or handling animal waste or byproducts, such as animal carcasses.

*Applicant* means a producer who has requested in writing to participate in EQIP.

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

*Beginning farmer or rancher* means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm, ranch, or NIPF for not more than ten consecutive years. This requirement applies to all members of an entity, who will materially and substantially

participate in the operation of the farm or ranch.

(2) 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.

(3) 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.

*Chief* means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

*Comprehensive Nutrient Management Plan* means a conservation plan that is specifically for an AFO. A CNMP identifies conservation practices and management activities which, when implemented as part of a conservation system, will manage sufficient quantities of manure, waste water, or organic by-products associated with a waste management facility. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource while protecting all natural resources including water and air quality associated with an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

*Conservation benefit* means the improved condition of a natural resource concern resulting from the implementation of a conservation practice.

*Conservation district* means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land

conservation committee,” “natural resource district,” or similar name.

*Conservation Innovation Grants (CIG)* means competitive grants made under EQIP to individuals, Indian Tribes, and governmental and nongovernmental organizations to stimulate and transfer innovative technologies and approaches, to leverage Federal funds, and to enhance and protect the environment in conjunction with agricultural production and forest management.

*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 the program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management, and other plans or activities determined acceptable by the Chief. Approved conservation practices are listed in the NRCS FOTG.

*Contract* means a legal document that specifies the rights and obligations of any participant accepted into the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of implementing conservation practices.

*Cost-effectiveness* means the least costly option for achieving a given set of conservation objectives to address a resource concern.

*Enrolled land* means the land area identified and included in the program contract at the time when funds have been obligated.

*EQIP plan of operations* means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land enrolled in the program in order to address the priority resource concerns, optimize environmental benefit, and address program purposes as defined in § 1466.1. The EQIP plan of operations is part of the EQIP contract.

*Estimated income foregone* means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice.

Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.

*Field office technical guide (FOTG)* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and implementation of conservation practices. It contains detailed information on the quality standards to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared.

*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. Forest management plans 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 Indian Tribe; or another plan determined appropriate by the State Conservationist. The plan is intended to comply with Federal, State, Tribal, and local laws, regulations, and permit requirements.

*Habitat development* means the application of conservation practices to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

*Historically underserved producer* means a person, joint operation, legal entity, or Indian Tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

*Indian land* means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes; or

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or

(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Integrated pest management* means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

*Joint operation* means, as defined in part 7 CFR 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

*Legal entity* means, as defined in 7 CFR 1400, an entity created under Federal or State law that:

- (1) Owns land or an agricultural commodity, product, or livestock; or
- (2) Produces an agricultural commodity, product, or livestock.

*Lifespan* means the period of time during which a conservation practice or activity should be maintained and used for the intended purpose.

*Limited resource farmer or rancher* means either:

(1) Individual Producer:

- (i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and
- (ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data), or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

*Liquidated damages* means a sum of money stipulated in the EQIP contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

*Livestock* means all domesticated animals produced on farms or ranches, as determined by the Chief.

*Livestock production* means farm or ranch operations involving the production, growing, raising, or reproduction of domesticated livestock or livestock products.

*Local working group* means the advisory body as defined in part 610 of this title.

*National Organic Program* means the national program established under the

Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.

*National priorities* means resource issues identified by the Chief, with advice from other Federal agencies, Indian Tribes, and State Conservationists, which will be used to determine the distribution of EQIP funds and guide local EQIP implementation.

*Natural Resources Conservation Service* is an agency of USDA, which has responsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

*Nonindustrial private forest land* means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

*Operation and maintenance (O&M)* means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of nonmaintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*O&M agreement* means the document that, in conjunction with the EQIP plan of operations, specifies the operation and maintenance responsibilities of the participant for conservation practices installed with EQIP assistance.

*Organic system plan (OSP)* means a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The OSP includes all written plans that govern all aspects of agricultural production or handling as required under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*).

*Participant* means an applicant that has entered into an EQIP contract who incurs the cost of practice implementation, will receive payment or is responsible for implementing the

terms and conditions of an EQIP contract.

*Payment* means financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: planning, design, materials, equipment, installation, labor, management, or training, as well as the estimated income foregone by the producer for designated conservation practices.

*Person* means, as defined in 7 CFR part 1400, an individual, natural person, and does not include a legal entity.

*Priority resource concern* means a natural resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee or Tribal Conservation Advisory Council, as a priority for a State, Tribal, local, geographic area, or watershed level.

*Producer* means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

*Resource concern* means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed through the implementation of conservation practices or activities by producers according to NRCS technical standards.

*Socially disadvantaged farmer or rancher* means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

*State Conservationist* means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Island Areas.

*State Technical Committee* means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

*Structural practice* means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filter strips, critical area plantings, tree plantings, establishment

or improvement of wildlife habitat, and capping of abandoned wells.

*Technical assistance* means technical expertise, information, training, education, and tools necessary for a producer to be able to successfully implement, operate, and maintain conservation practices to ensure the conservation of natural resources on land active in agricultural, forestry, or related uses. These technical services include the following:

(1) Technical services provided directly to farmers, ranchers, Indian Tribes, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, education, data, technology, monitoring, and effects analyses.

*Technical service provider (TSP)* means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contributions agreement, or cooperative agreement with the Department.

*Tribal Conservation Advisory Council* means, in lieu of or in addition to forming a Tribal conservation district, an Indian Tribe may elect to designate an advisory council to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The advisory council may be an existing Tribal committee or department, and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, and programs and their impacts on Tribes.

*Veteran farmer or rancher* means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

*Wildlife* means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

*Wildlife habitat* means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

**§ 1466.4 National priorities.**

(a) The following national priorities, consistent with statutory resources concerns that include soil quality, water quality and quantity, plants, energy, wildlife habitat, air quality, and related natural resource concerns, may be used in EQIP implementation:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total maximum daily loads (TMDL) where available; the reduction of surface and groundwater contamination; and the reduction of contamination from agricultural sources, such as animal feeding operations;

(2) Conservation of ground and surface water resources;

(3) Reduction of emissions, such as particulate matter, nitrogen oxides, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(4) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land;

(5) Promotion of at-risk species habitat conservation including development and improvement of wildlife habitat; and

(6) Energy conservation to help save fuel, improve efficiency of water use, maintain production, and protect soil and water resources by more efficiently using fertilizers and pesticides.

(b) In consultation with other Federal agencies and Indian Tribes, NRCS may undertake periodic reviews of the national priorities and the effects of program delivery at the State and local levels to adapt the program to address emerging resource issues. NRCS may:

(1) Use the national priorities to guide the allocation of EQIP funds to the NRCS State offices;

(2) Use the national priorities in conjunction with State, Indian Tribes, and local priorities to assist with prioritization and selection of EQIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian Tribes, other Federal and State agencies, and affected stakeholders to ensure that the program continues to address priority resource concerns.

**§ 1466.5 Outreach activities.**

NRCS will establish program outreach activities at the national, State, Tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and

informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders. NRCS provides outreach so as not to limit producer participation because of size or type of operation, or production system, including small-scale, specialty crop, and organic production.

**§ 1466.6 Program requirements.**

(a) Program participation is voluntary. An applicant must develop an EQIP plan of operations for the eligible land to be treated that serves as the basis for the EQIP contract. Under EQIP, NRCS provides its participants with technical assistance and payments to plan and apply needed conservation practices.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Must be a producer as determined by NRCS;

(3) Have control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land administered by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(i) The Chief may determine that land administered by BIA, Indian land, or other such circumstances provides sufficient assurance of control, and

(ii) If the applicant is a tenant of the land involved in agricultural production or forestry management, the applicant will provide the Chief with the written concurrence of the landowner in order to apply a structural practice;

(4) Agree to implement the EQIP plan of operations according to the provisions and conditions established in the EQIP contract, including the EQIP contract appendix;

(5) Submit an EQIP plan of operations or plan developed for the purposes of acquiring an air or water quality permit, provided these plans contain elements equivalent to those elements required by an EQIP plan of operations and are acceptable to NRCS as being consistent with the purposes of the program;

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource, beginning farmer or rancher, and payment

eligibility as established by 7 CFR part 1400;

(7) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170; and

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity.

(c) Eligible land includes cropland, grassland, rangeland, pasture, NIPF, and other land on which agricultural products, livestock, or forest-related products are produced and resource concerns may be addressed. Other agricultural lands 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:

(1) Privately owned land; or

(2) Publicly owned land where:

(i) The land is a working component of the participant's agricultural and forestry operation,

(ii) The participant has control of the land for the term of the contract, and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

(3) Indian land.

**§ 1466.7 EQIP plan of operations.**

(a) All conservation practices in the EQIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable NRCS planning and FOTG technical requirements.

(b) The participant is responsible for implementing the EQIP plan of operations according to the approved implementation schedule.

(c) The EQIP plan of operations must include:

(1) A description of the participant's specific conservation objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and natural resource objectives;

(3) A description of one or more conservation practices in the conservation management system, including conservation planning, design, or installation activities to be implemented to achieve the conservation objectives;

(4) A description of the schedule for implementing the conservation

practices, including timing, sequence, operation, and maintenance; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the conservation objectives.

(d) If an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period.

(e) If an EQIP plan of operations includes conservation practices that address forest land related resource concerns, the participant must develop and implement a forest management plan by the end of the contract period.

(f) A participant may receive assistance to implement an EQIP plan of operations which includes irrigation related practices to address a water conservation resource concern only if the assistance will facilitate a reduction in ground or surface water use on the agricultural operation, unless the producer is participating in a watershed-wide project, as approved by the State Conservationist, which will effectively conserve water in accordance with § 1466.20.

#### **§ 1466.8 Conservation practices.**

(a) NRCS will determine the conservation practices for which participants may receive program payments. NRCS will provide a list of eligible practices to the public as approved in the NRCS FOTG.

(b) Payment will not be made to a participant for conservation practice that:

- (1) Either the applicant or another producer has initiated or implemented prior to application for the program; or
- (2) Has been initiated or implemented prior to contract approval, unless a waiver was granted by the Chief prior to the practice implementation.

(c) A participant will be eligible for payments for water conservation and irrigation related conservation practices only on land that has been irrigated for 2 of the last 5 years prior to application for assistance. This irrigation history requirement may be waived for circumstances as determined by the Chief.

(d) Where new technologies or management approaches that provide a high potential for optimizing conservation benefits have been developed, NRCS may approve interim conservation practice standards that incorporate the new technologies and provide financial assistance for pilot work to evaluate and assess the performance, efficiency, and

effectiveness of the new technology or management approach.

(e) NRCS will at least annually consult with State Technical Committees, Tribal Conservation Advisory Councils, local work groups, and other stakeholders to identify conservation practices with appropriate purposes and the criteria for their application to address priorities to establish wildlife habitat including:

- (1) Upland wildlife habitat;
- (2) Wetland wildlife habitat;
- (3) Habitat for threatened and endangered species;
- (4) Fish habitat;
- (5) Habitat on pivot corners and other irregular areas of a field, and
- (6) Other types of wildlife habitat, as determined by NRCS.

#### **§ 1466.9 Technical services provided by qualified personnel not affiliated with USDA.**

(a) NRCS may use the services of qualified third party technical service providers in its delivery of EQIP technical assistance in accordance with 7 CFR part 652.

(b) Participants may obtain technical services from certified technical service providers in accordance with 7 CFR part 652.

(c) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving EQIP payments.

### **Subpart B—Contracts and Payment**

#### **§ 1466.20 Application for contracts and selecting applications.**

(a) In evaluating EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group takes into account the following guidelines:

(1) Any producer who has eligible land may submit an application for participation in EQIP. Applications may be accepted on a continuous basis throughout the year. Producers who are members of a joint operation may file a single application for ranking purposes for the joint operation.

(2) NRCS, to the greatest extent practicable, will group applications of similar crop, forestry, and livestock operations for evaluation purposes.

(b) In selecting EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group, may establish ranking pools to address a specific resource concern, geographic area, or agricultural operation type or develop a ranking process to prioritize applications for funding that address national, State, and

local priority resource concerns, taking into account the following guidelines:

(1) NRCS will periodically select the highest ranked applications for funding based on applicant eligibility, fund availability, and the NRCS ranking process. NRCS will rank all applications according to the following factors related to conservation benefits to address identified resource concerns through implementation of conservation practices:

(i) The degree of cost-effectiveness of the proposed conservation practices,

(ii) The magnitude of the expected conservation benefits resulting from the conservation treatment and the priority of the resource concerns that have been identified at the local, State, and national levels,

(iii) How effectively and comprehensively the project addresses the designated resource concern or resource concerns,

(iv) Use of conservation practices that provide long-term conservation enhancements,

(v) Compliance with Federal, State, Tribal, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation,

(vi) Willingness of the applicant to complete all conservation practices in an expedited manner,

(vii) The ability to improve existing conservation practices or systems which are in place at the time the application is accepted, or that complete a conservation system, and

(viii) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(2) For applications that include water conservation or irrigation-related practices, and consistent with State law in which the applicant's eligible land is located, NRCS may give priority to those applications that:

(i) Result in a reduction in water use in the agricultural operation, or

(ii) Include an agreement by the applicant not to use any associated water savings to bring new land (other than incidental land needed for efficient operations) under irrigation production unless the producer is participating in a watershed-wide project that will effectively conserve water. NRCS may designate eligible watershed-wide projects that effectively conserve water, using the following criteria:

(A) The project area has a current, comprehensive water resource assessment,

(B) The project plan has demonstrated effective water conservation management strategies, and

(C) The project sponsors have consulted relevant State and local agencies.

(3) If NRCS determines that the conservation benefits of two or more applications for payments are comparable, NRCS may not assign a higher priority to the application solely because it would present the least cost to the program.

(4) The ranking score may not give preferential treatment to applications based on size of the operation, income generated from the operation, type of operation, or other factors not related to conservation benefits to address a resource concern unless authorized in this rule.

(5) The ranking process will determine the order in which applications will be selected for funding. The approving authority for EQIP contracts will be NRCS.

(6) NRCS will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in a State.

#### **§ 1466.21 Contract requirements.**

(a) In order for a participant to receive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Payment for technical services may be included in the contract pursuant to requirements of this part.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, the operation and maintenance requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a term for not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not implement any practices on the enrolled land that would defeat the program's purposes,

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26,

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the EQIP contract's

conservation practices, consistent with the provisions of § 1466.25,

(iv) Develop and implement a CNMP when the EQIP contract includes an animal waste management facility on an AFO by the end of the contract period,

(v) Implement a forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

(vi) Supply information as may be required by NRCS to determine compliance with contract and program requirements, and

(vii) Specify the participant's responsibilities for operation and maintenance of the applied conservation practices, consistent with the provisions of § 1466.22; and

(4) Specify any other provision determined necessary or appropriate by NRCS to achieve the technical requirements of a practice or purposes of the program.

(c) The participant must start at least one financially assisted practice within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start conservation practice within the first year of the contract, the participant can request a modification from NRCS.

(d) Each contract will be limited to no more than \$450,000, unless the contract is with an Indian Tribe. Contracts related to organic operations are also subject to payment limitations pursuant to § 1466.24(b).

#### **§ 1466.22 Conservation practice operation and maintenance (O&M).**

(a) The contract will incorporate the O&M agreement that addresses the operation and maintenance of conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.

(c) Conservation practices installed before the contract execution, but included in the contract to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

(d) NRCS may periodically inspect the conservation practice during the contract duration as specified in the O&M agreement to ensure that operation and maintenance requirements are being carried out and that the conservation practice is fulfilling its intended objectives.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate

manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

#### **§ 1466.23 Payment rates.**

(a) NRCS will develop a list of conservation practices eligible for payment under the program, which considers:

(1) The conservation practice cost-effectiveness, implementation efficiency, and innovation;

(2) The degree and effectiveness in treating priority resource concerns;

(3) The number of resource concerns the practice will address;

(4) The longevity of the practice's conservation benefit;

(5) The conservation practice's ability to assist producers in meeting regulatory requirements; and

(6) Other pertinent local considerations.

(b) The Chief will determine the process and methodology used for development, review, and approval of payment schedules to support accurate and cost-effective delivery of program benefits, including determination of estimated incurred costs and income foregone associated with implementation of all financially-supported conservation practices or activities.

(1) A payment to a participant for performing a practice may not exceed, as determined by NRCS, the following maximum payment percentages:

(i) Estimated costs of 75 percent incurred by implementing the conservation practice,

(ii) Estimated income foregone is 100 percent, or

(iii) Both conditions in paragraphs (b)(1)(i) and (ii) of this section, where a producer incurs costs in implementing a conservation practice and foregoes income related to that practice implementation, and

(iv) In determining the amount and rate of estimated income foregone, NRCS may assign higher significance to conservation practices which promote:

(A) Soil health;

(B) Water quality and quantity improvement;

(C) Nutrient management;

(D) Pest management;

(E) Air quality improvement;

(F) Wildlife habitat development, including pollinator habitat;

(G) Invasive species management; and

(H) Other natural resource concerns of regional or national significance, as determined by NRCS.

(2) Notwithstanding paragraph (b)(1) of this section, a participant that meets the definition of a veteran farmer or

rancher or the definition a historically underserved producer under § 1466.3 may be awarded the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the incurred costs estimated for the conservation practice.

(3) The payments to a participant through EQIP will be reduced proportionately below the contracted payment rate established by the Chief, so that the total combined payments for a conservation practice from EQIP and other USDA sources will not exceed 100 percent of the estimated costs incurred for implementing or performing the conservation practice.

(4) When the agency enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief must adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice. The formal agreement must be approved by NRCS prior to announcement of the program initiative and adjusted payment rates.

(5) NRCS may provide payments for conservation practices on some or all of the operations of a participant related to organic production and the transition to organic production. Payments may not be provided for any costs associated with organic certification, enterprise costs associated with transition to organic production, or for practices or activities that are eligible for financial assistance under the National Organic Program (7 U.S.C. 6523).

#### **§ 1466.24 EQIP payments.**

(a) Except for contracts entered into prior to February 7, 2014, which are subject to regulations and contract requirements in effect prior to February 7, 2014, or as provided in paragraph (b) of this section, the total amount of payments paid to a person or legal entity under this part may not exceed an aggregate of \$450,000, directly or indirectly, for all contracts entered into during fiscal years 2014 through 2018. Payments received for technical assistance will be excluded from this limitation. The limitation in this subsection cannot be waived.

(b) 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 fiscal year or \$80,000 during any 6-year period.

(c) To determine eligibility for payments, NRCS will use the following criteria:

(1) The provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility.

(2) States, political subdivisions, and entities thereof are not considered to be producers eligible for payment.

(3) To be eligible to receive an EQIP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' social security numbers and percentage interest in the joint operation or legal entity.

(4) Contracts with Indian Tribes are not subject to payment or contract limitations. Indian Tribes will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of enrollment will cover the entire contract period. The Tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations.

(i) Payment limitations apply to individual Tribal member(s) when applying and subsequently being granted a contract as an individual(s). American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(ii) Any individual Tribal member that is identified utilizing a unique identification number as an alternative to a tax identification number will utilize only that identifier for all contracts to which the individual Tribal member receives a payment directly or indirectly.

(5) To be eligible to receive a payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage of

interest in the joint operation or legal entity.

(6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

(7) Eligibility for payments in accordance with part 7 CFR part 1400, average adjusted gross income limitation, will be determined prior to contract approval.

(8) To be eligible for payments for conservation practices related to organic production or the transition to organic production:

(i) Participants who are USDA certified organic producers will implement conservation practices that are consistent with an approved organic system plan (OSP), and

(ii) Participants who are transitioning to organic production (including participants who are exempt from certification as defined by the Organic Foods Production Act of 1990) will develop an OSP and implement conservation practices that are consistent with OSP requirements and purposes of the program.

(9) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice to address the same resource concern on the same land under any other conservation program administered by USDA.

(10) NRCS may issue advance payments to participants that are historically underserved producers up to 50 percent of the anticipated amount of the costs incurred for the purpose of purchasing materials or services to implement a conservation practice. Eligibility for advance payment is contingent upon the requirement that the participant must obtain an NRCS approved practice design prior to approval of the advance payment. Advance funds paid to program participants must be expended within 90 days from receipt of funds or returned to NRCS within a reasonable time as determined by NRCS.

(11) Before NRCS will approve and issue any EQIP payment, the participant must certify that the conservation practice has been completed in accordance with contract requirements, and NRCS or an approved TSP must certify that the practice has been carried out in accordance with the applicable NRCS FOTG technical standards.

#### **§ 1466.25 Contract modifications and transfers of land.**

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the

contract continues to meet the purposes of the program, and the contract modification is approved by NRCS.

(b) It is the participant's responsibility to notify NRCS when the participant anticipates either the voluntary or involuntary loss of control of the land covered by an EQIP contract.

(c) The participant and NRCS may agree to transfer a contract to another party.

(1) To receive an EQIP payment, the transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) If the transferee is ineligible or refuses to accept future payments, NRCS will terminate the contract and may require the transferor to refund or forfeit all payments received.

(d) NRCS may require a participant to refund all or a portion of any financial assistance provided under EQIP if the participant sells or loses control of the land covered by an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

(e) In the event a conservation practice fails through no fault of the participant, NRCS may issue payments to re-establish the practice, at the rates established in accordance with § 1466.23, provided such payments do not exceed the payment limitation requirements as set forth § 1466.24.

#### **§ 1466.26 Contract violations and terminations.**

(a) NRCS may terminate a contract:

(1) Without the consent of the participant where it determines that the participant violated the contract; or

(2) With the consent of the participant if NRCS determines that the termination is in the public interest.

(b) NRCS may allow a participant in a contract terminated in accordance with the provisions of paragraph (a) to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. The condition that is the basis for the participant's inability to comply with the contract must not have existed at the time the contract was executed by the participant. If a participant believes that such a hardship condition exists, the participant may submit a request with NRCS for relief pursuant to this

paragraph and any such request must contain documentation sufficient for NRCS to make a determination that this hardship condition exists.

(c) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or documents incorporated by reference into the contract, NRCS may give the participant a period of time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues to be in violation, NRCS may terminate the EQIP contract in accordance with § 1466.26(e).

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or

(3) Incurred a violation of the contract provisions that cannot be corrected in a timeframe established by NRCS.

(e) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation practice can function independently and is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(2) NRCS may reduce or waive the liquidated damages depending upon the circumstances of the case.

(3) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract.

(f) NRCS may terminate a contract that provides payments to a participant for conservation practices related to organic production, if NRCS determines that the participant is not implementing practices according to provisions of the contract agreement or does not meet provisions of this part.

#### **§ 1466.27 Conservation Innovation Grants.**

(a) In addition to the terms defined in § 1466.3, the following definitions will be applicable to this section:

(1) *EQIP eligible* means any farming entity, land, and practice that meets the definitions of EQIP as defined in 7 CFR part 1466.

(2) *Grant agreement* means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law and substantial Federal involvement is not anticipated.

(3) *Grant Review Board* consists of representatives of NRCS staff as determined by the Chief.

(4) *Technical Peer Review Panel* means a panel consisting of Federal and non-Federal technical advisors who possess expertise in a discipline or disciplines deemed important to provide a technical evaluation of project proposals submitted under the funding opportunity announcement.

(5) *Project* means the activities as defined within the scope of the grant agreement or cooperative agreement.

(6) *Project director* means the individual responsible for the technical direction and management of the project as designated in the application.

(7) *On-farm conservation research* means an investigation conducted to answer a specified conservation-related question using a statistically valid design, while employing farm scale equipment on farm fields.

(b) *Purpose and scope.* (1) The purpose of Conservation Innovation Grants (CIG) is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS will administer CIG in accordance with this section. Unless otherwise provided for in this section, grants under CIG are subject to the provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(2) Applications for CIG are accepted from the 50 States, District of Columbia, Caribbean Area (Puerto Rico and Virgin Islands of the United States), and Pacific Islands Area (Guam, American Samoa, and Commonwealth of the Northern Mariana Islands).

(3) Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in [grants.gov](http://grants.gov) or successor Federal grants portal. In addition, at the Chief's discretion, each State may implement a separate State-level component of CIG.

(4) Applications for CIG should demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund projects that promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides or to the private sector. Technologies and approaches eligible for funding in a project's geographic area through EQIP are not eligible for CIG funding except where the use of those technologies and approaches demonstrates clear innovation. The burden falls on the applicant to sufficiently describe the innovative features of the proposed technology or approach.

(5) For the purposes of CIG, the proposed innovative project or activity must promote environmental protection or natural resources enhancement, and encompass development and pilot field testing, on-farm research and demonstration, evaluation, and/or implementation of:

(i) Conservation adoption incentive systems, including market-based systems, or

(ii) Promising conservation technologies, practices, systems, procedures, or approaches.

(6) Projects or activities under CIG must comply with all Federal, State, and local regulations throughout the duration of the project and:

(i) Make use of proven technology or a technology that has been studied sufficiently to indicate a high probability for success,

(ii) Demonstrate, evaluate, or verify environmental (soil, water, air, plants, energy and animal) effectiveness, utility, affordability, and usability of conservation technology in the field,

(iii) Adapt conservation technologies, management, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption,

(iv) Introduce conservation systems, approaches, and procedures from another geographic area or agricultural sector, or

(v) Demonstrate transferability of knowledge.

(c)(1) CIG funding will be available for single- or multi-year projects. Funding for CIG will be announced in [grants.gov](http://grants.gov) or a Federal grant portal through an Announcement for Program Funding (APF). The Chief will determine the funding level for CIG on an annual basis. Funds for CIG are derived from funds made available for EQIP. The Chief may establish funding limits for individual grants.

(2) Selected applicants may receive grants or cooperative agreements of up to 50 percent of the total project cost not to exceed the Federal project cap. Applicants must provide non-Federal funding equal to the amount of Federal funds requested. Non-Federal funds must be derived from cash and/or in-kind sources.

(3) CIG is designed to provide financial assistance to grantees. Procurement of any technical assistance required to carry out a project is the responsibility of the grantee. Technical oversight for grant projects will be provided by a Federal technical representative who will be designated by NRCS.

(d) CIG applications must describe the use of innovative approaches or technologies to address a natural resource conservation concern or concerns. The resource concerns for CIG will be identified by the Chief and may change each year. The resource concerns will be published in the APF.

(e)(1) To be eligible, CIG applicants must be an Indian Tribe, State or local unit of government, nongovernmental organization, or individual.

(2) To be eligible, projects must involve landowners who meet the eligibility requirements of § 1466.6(b)(1) through (3). All agricultural producers receiving a direct or indirect payment through participation in a CIG project must meet those eligibility requirements.

(3) Up to 10 percent of the total funds available for CIG may be set aside for applications from historically underserved producers or veteran farmers or ranchers, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.

(f) The CIG APF will contain guidance on how to apply for the grants competition. CIG will be advertised through the NRCS Web site and [grants.gov](http://grants.gov) or other Federal grants portal. Grant applications will be available on the NRCS Web site or by contacting NRCS at the address provided in the

APF. CIG grant applications will consist of standard cover sheet and budget forms, in addition to a narrative project description and required legal declarations and certifications.

(g) Complete applications will be evaluated by a peer review panel based on the application evaluation criteria identified in the APF. Application evaluations will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief, and the final selections will be made by the Chief. Grant or cooperative agreement awards will be made by the NRCS national office after selection of the grantees is made and after the grantee agrees to the terms and conditions of the NRCS Grant or cooperative agreement document.

(h)(1) NRCS has the option of implementing a State-level CIG component. A State program will follow the requirements of this section, except for those features described in this subsection.

(2) Funding availability, application, and submission information for State competitions will be announced through public notices ([grants.gov](http://grants.gov) or a successor Federal grants portal and on the State NRCS Web site), separately from the national program. The State component will emphasize projects that cover limited geographic areas including individual farms, multi-county areas, or small watersheds.

(3) The State Conservationist will determine the funding level for the state CIG competition, with individual grants not to exceed \$75,000.

(4) NRCS may choose to adhere to the CIG national resource concerns for a state or may select a subset of those concerns that more closely match the resource concerns of the State.

(i) Allocation of rights to patents and inventions shall be in accordance with 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

## Subpart C—General Administration

### § 1466.30 Appeals.

A participant may obtain administrative review of an adverse

decision under EQIP in accordance with parts 11 and 614 of this title. Determination in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation practices are not subject to appeal.

**§ 1466.31 Compliance with regulatory measures.**

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

**§ 1466.32 Access to operating unit.**

Any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to contract performance. Access will include the right to provide technical assistance, determine eligibility, inspect any work undertaken under the contract, and collect information necessary to evaluate the conservation practice performance specified in the contract. The NRCS representative will make an effort to contact the participant prior to the exercising this provision.

**§ 1466.33 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when

NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, but the participant believes that a good faith effort to comply was made, the participant may request equitable relief under § 635.3 in chapter VI of this title.

(b) If, during the term of an EQIP contract, a participant has been found in violation of a provision of the EQIP contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under § 635.4 in chapter VI of this title.

**§ 1466.34 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, joint venture, legal entity, or Tribe will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will be applicable to contract payments.

(b) EQIP participants may assign any payments in accordance with part 1404 of this chapter.

**§ 1466.35 Misrepresentation and scheme or device.**

(a) A person, joint operation, legal entity, or Indian Tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest, determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination, will refund to NRCS all payments, plus interest, determined in accordance with 7 CFR part 1403, received by such producer with respect to all contracts. The producer's interest in all contracts will be terminated.

**§ 1466.36 Environmental credits for conservation improvements.**

(a) A participant in EQIP may achieve environmental benefits that may qualify for environmental credits under an environmental credit-trading program. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that EQIP purposes are met. In addition, any requirements or standards of an environmental market program in which an EQIP participant simultaneously enrolls to receive environmental credits must be compatible with the purposes and requirements of the EQIP contract and with this part.

(b) The participant must meet all O&M requirements for EQIP-funded activities, consistent with § 1466.21 and § 1466.22. Where activities required under an environmental credit agreement may affect the land and conservation practices under an EQIP contract, NRCS recommends that EQIP participants request assistance with the development of a compatibility assessment prior to entering into any credit agreement. The EQIP contract may be modified in accordance with policies outlined in § 1466.25, provided the modification meet EQIP purposes and is in compliance with this part.

(c) EQIP participants may not use EQIP funds to implement conservation practices and activities that the participant is required to establish as a result of a court order. EQIP funds may not be used to satisfy any mitigation requirement for which the EQIP participant is responsible.

Signed this 4th day of December 2014, in Washington, DC.

**Jason A. Weller,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. 2014-28941 Filed 12-11-14; 8:45 am]

**BILLING CODE 3410-16-P**