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(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 an AMA determination.

(c) Where paragraph (a) or paragraph (b) of this section apply, the participant's interest in all contracts shall be terminated. In accordance with § 1465.25(c), NRCS may determine the producer ineligible for future funding from any NRCS conservation programs.

§ 1465.36 Environmental Services Credits for Conservation Improvements.

USDA recognizes that environmental benefits will be achieved by implementing conservation practices funded through AMA, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an AMA contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that the requirements for AMA funded improvements are met and maintained consistent with § 1465.22. Where activities required under an environmental credit agreement may affect land covered under an AMA contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa-3839-8

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Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Natural Resources Conservation Service (NRCS) provides assistance to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner and to assist producers in complying with environmental regulations. The purposes of the program are achieved by implementing structural and land management conservation practices on eligible land.

§ 1466.2 Administration.

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (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 and the Farm Service Agency (FSA) will consult, at the National level, in establishing policies,

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priorities, and guidelines related to the implementation of this part. FSA may continue to participate in EQIP through participation on State Technical Committees and Local Work Groups.

(c) NRCS supports “locally-led conservation” by using State Technical Committees at the state level and Local Work Groups at the county/parish level to advise NRCS on technical issues relating to the implementation of EQIP such as:

(1) Identification of priority natural resource concerns;

(2) Identification of which conservation practices should be eligible for financial assistance; and

(3) Establishment of cost-share rates and incentive payment levels.

(d) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS from determining any issues arising under this Part or from reversing or modifying any determination made under this Part.

(e) 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, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, constituting a cohesive management unit for agricultural purposes. An agricultural operation shall be regarded as located in the county in which the principle dwelling is situated, or if there is no dwelling thereon, it shall be regarded to be in the county in which the major portion of the land is located.

Animal waste management facility means a structural conservation practice used for storing or treating animal waste.

Applicant means an individual, entity or joint operation who has an interest in a farming operation, as defined in 7 CFR 1400.3, who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species as determined by the State Technical Committee to need direct intervention to halt its population decline.

Beginning Farmer or Rancher means an individual or entity who:

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

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) 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

(ii) 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, USDA, or designee.

Comprehensive Nutrient Management Plan (CNMP) means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-

products and their potential impacts on all natural resources including water and air quality, which may derive from 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 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," or similar name.

Conservation Innovation Grants means competitive grants made under EQIP to individuals, governmental and non-governmental organizations to stimulate innovative methods to leverage Federal funds to implement EQIP to enhance and protect the environment in conjunction with agricultural production.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any individual or entity who has been accepted to participate in 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 applying conservation practices as opposed to procurement contract.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing a structural conservation practice.

Cost-effectiveness refers to the least-cost practices or system that achieves the stated conservation objectives.

Designated Conservationist means a NRCS employee whom the State Con-

servationist has designated as responsible for administration of EQIP in a specific area.

Entity means those organizations as defined in 7 CFR 1400.3.

EQIP plan of operations means the identification, location and timing of conservation practices, both structural and land management, that the producer proposes to implement on eligible land in order to address the priority natural resource concerns and optimize environmental benefits.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the financial assistance from NRCS to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian Tribe means any Indian Tribe, band, nation, 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.*) that is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government-owned land under Bureau of Indian Affairs jurisdiction.

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Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 1400.3.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Lifespan means the period of time during which a conservation practice is to be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS), and

(2) 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).

Liquidated damages means a sum of money stipulated in the EQIP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, buffalo, poultry, turkeys, swine, sheep, horses, goats, fish or other animals raised by aquaculture, or animals the State Conservationist identifies

with the advice of the State Technical Committee.

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

Local Work Group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to EQIP implementation.

National measures mean measurable criteria identified by the Chief of NRCS, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the National Priorities and statutory requirements.

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

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and 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.

Participant means a producer who is a party to an EQIP contract.

Person has the same meaning as set out in 7 CFR 1400.3.

Priority natural resource concern(s) means an existing or pending degradation of natural resource condition(s) as identified locally by the State Conservationist or Designee with advice from the State Technical Committee and Local Work Groups.

Producer means an individual or entity who is engaged in livestock or agricultural production.

Regional Conservationist means the NRCS employee authorized to direct

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and supervise NRCS activities in a NRCS region.

Related natural resources means natural resources that are associated with soil and water, including air, plants, and animals and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Secretary means the Secretary of the U. S. Department of Agriculture.

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

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect 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, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to: (1) Conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (2) training, certification, and quality assurance of professional conservationists; and (3) evaluation and assessment of the producer's operation and maintenance needs.

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants or to NRCS.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals along with all other non-domesticated animals.

§ 1466.4 National Priorities.

(a) The following National priorities will be used in the implementation of EQIP:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with TMDLs where available as well as the reduction of groundwater contamination and the conservation of ground and surface water resources;

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

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

(4) Promotion of at-risk species habitat conservation.

(b) With the advice of other Federal agencies, NRCS will undertake periodic reviews of the National priorities and the effects of program delivery at the state and local level. The Chief intends to annually review the National priorities to adapt the program to address emerging resource issues. NRCS will:

(1) Use the National priorities to guide the allocation of EQIP funds to the State NRCS offices,

(2) Use the National priorities in conjunction with state 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 and affected stakeholders to ensure that the program continues to address national resource needs.

§ 1466.5 National Allocation and Management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the state and local level. In order to optimize the overall environmental benefits over the duration of the program, the Chief of NRCS will:

(a) Use an EQIP fund allocation formula that reflects National priorities and measures and that uses available natural resource and resource concerns data to distribute funds to the state level. This procedure will be updated periodically to reflect adjustments to National priorities and information about resource concerns and program

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performance. The data used in the allocation formula will be updated as it becomes available.

(b) Provide a performance incentive to NRCS in States that demonstrate a high level of program performance in implementing EQIP. Performance incentives shall consider factors such as strategically planning EQIP implementation, effectively addressing National priorities and measures and state and local resource concerns, the effectiveness of program delivery, the use of Technical Service Providers, and the number of contracts with Limited Resource Producers and Beginning Farmers. These funds will be made available annually from a reserve established at the National level when funds become available.

(c) Use NRCS's accountability system to establish state level EQIP performance goals and treatment objectives.

(d) Ensure that National, state and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, allocation of base and reserve funds, and program achievements is made available to the public.

(e) Consult with State Conservationists and other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with the advice from the State Technical Committee and Local Work Groups, to determine how funds will be used and how the program will be administered to achieve National priorities and measures in each state.

(g) Move towards assessment, evaluation and accountability based on actual natural resource and environmental outcomes and results.

§ 1466.6 State Allocation and Management.

The State Conservationist will:

(a) Identify State priority natural resource concerns with the advice of the State Technical Committee that directly contribute towards meeting National priorities and measures and will use NRCS's accountability system to establish local level EQIP performance goals and treatment objectives;

(b) Identify, as appropriate and necessary, Designated Conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas, and

(c) Use the following to determine how to manage the EQIP program and how to allocate funds within a state:

(1) The nature and extent of priority natural resource concerns at the state and local level;

(2) The availability of human resources, incentive programs, education programs, and on-farm research programs from Federal, State, Indian Tribe, and local levels, both public and private, to assist with the activities related to the priority natural resource concerns;

(3) The existence of multi-county and/or multi-state collaborative efforts to address regional priority natural resource concerns;

(4) Ways and means to measure performance and success; and

(5) The degree of difficulty that producers face in complying with environmental laws.

§ 1466.7 Outreach Activities.

NRCS will establish program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems and priority natural resource concerns are aware, informed, and know 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 producers, small-scale producers, Indian Tribes, Alaska Natives, and Pacific Islanders.

§ 1466.8 Program requirements.

(a) Program participation is voluntary. The applicant develops an EQIP plan of operations for the agricultural land to be treated that serves as the basis for the EQIP contract. NRCS provides participants with technical assistance, cost-share and/or incentive payments to apply needed conservation practices and land-use adjustments.

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

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(1) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12.

(2) Have an interest in the farming operation as defined in 7 CFR 1400.3.

(3) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide the Chief of NRCS with the written concurrence of the landowner in order to apply a structural conservation practice.

(4) Submit an EQIP plan of operations that is acceptable to NRCS as being in compliance with the terms and conditions of the program; and

(5) 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 farmer or rancher or beginning farmer or rancher and eligibility as per Adjusted Gross Income, 7 CFR 1400 subpart G.

(c) Land used as cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a threat to soil, water, air, or related natural resources, may be eligible for enrollment in EQIP. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit; and

(ii) The conservation practices will contribute to an improvement in the identified natural resource concern; or

(3) Tribal, allotted, or Indian trust land.

(d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands di-

rectly attributable to livestock production, as measured at the National level.

§ 1466.9 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be carried out in accordance with the applicable NRCS field office technical guide.

(b) The EQIP plan of operations must include:

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

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

(3) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing and sequence; and

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

(c) If an EQIP plan of operations includes an animal waste storage or treatment facility, the participant must provide for the development and implementation of a comprehensive nutrient management plan.

(d) Participants are responsible for implementing the EQIP plan of operations.

(e) A participant may receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by section 1240I of the 1985 Act, 16 U.S.C. 3839aa-9, only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

§ 1466.10 Conservation practices.

(a) NRCS will determine which structural and land management practices are eligible for program payments. A list of eligible practices will be available to the public.

(b) Cost-share and incentive payments will not be made to a participant for a conservation practice that

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the applicant has applied prior to application for the program.

(c) Cost-share and incentive payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or Designated Conservationist prior to the installation of the practice.

(d) A participant will be eligible for cost-share or incentive payments for irrigation related structural and land management practices only on land that has been irrigated for two of the last five years prior to application for assistance.

(e) Where new technologies or conservation practices that provide a high potential for optimizing environmental benefits have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

§ 1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Participants may use technical and other assistance from qualified personnel of other Federal, State, and local agencies, Indian Tribes, or individuals who are certified as Technical Service Providers by NRCS.

(c) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to; conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists. Payments to certified Technical Service Providers will be made only for an application that has been approved for payments.

(d) NRCS retains approval authority over certification of work done by non-

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NRCS personnel for the purpose of approving EQIP payments.

Subpart B—Contracts and Payments

§ 1466.20 Application for contracts and selecting offers from producers.

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

(b) The State Conservationist or Designated Conservationist with advice from the State Technical Committee or Local Work Groups will develop a ranking process to prioritize applications for funding which address priority natural resource concerns. The State Conservationist or Designated Conservationist will periodically select for funding the highest ranked applications based on applicant eligibility and the NRCS ranking process. The State Conservationist or Designated Conservationist will rank all applications according to the following factors:

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

(2) The magnitude of the environmental benefits resulting from the treatment of National priorities and the priority natural resource concerns reflecting the level of performance of a conservation practice,

(3) Treatment of multiple resource concerns,

(4) Use of conservation practices that provide environmental enhancements for a longer period of time,

(5) Compliance with Federal, state, local or tribal regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation, and

(6) 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.

(c) If the State Conservationist determines that the environmental values of two or more applications for cost-share payments or incentive payments are

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comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

(d) The ranking will not give preferential treatment to applications based on size of the operation.

(e) The ranking will determine which applications will be awarded contracts. The approving authority for EQIP contracts will be the State Conservationist or designee except the approving authority for any EQIP contract greater than \$100,000 is the NRCS Regional Conservationist.

(f) The State Conservationist will make all information regarding priority resources concerns, how the EQIP program is implemented in the state, and the cost-list of eligible practices available to the public.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Cost-share payments and incentive payments as well as reimbursement for Technical Service Provider technical assistance may be included in a contract.

(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 cost-shares and incentive payments allocated to the practices under the contract;

(2) Be for a minimum duration of one year after completion of the last practice, but 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 farm or ranch unit under the contract, or agricultural operation of the producer for ground and surface water conservation contracts, that would tend to defeat the purposes of the program;

(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 of the contract, consistent with the provisions of § 1466.25;

(iv) Implement a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility; and

(v) Supply information as may be required by NRCS to determine compliance with the contract and requirements of the program.

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

(5) Specify any other provision determined necessary or appropriate by NRCS.

(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 a practice within the first year of the contract, they can request a waiver from the State Conservationist.

(d) Each contract will be limited to no more than \$450,000.

§ 1466.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of conservation practices applied under the contract. The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon must be operated and maintained as specified in the contract. NRCS may periodically inspect a conservation practice during the life-span of the practice as specified in the contract to ensure that operation and maintenance are occurring. When NRCS finds that a participant is not

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operating and maintaining practices in an appropriate manner, NRCS will request a refund of cost-share or incentive payments made for that practice under the contract.

§ 1466.23 Cost-share rates and incentive payment levels.

(a) Determining Cost-share payment rates.

(1) The maximum cost-share payments made to a participant under the program will not be more than 75 percent of the actual cost of a structural practice, as determined by the State Conservationist or Designated Conservationist, except that for a Limited Resource Farmer or Rancher or Beginning Farmer and Rancher cost-share payments may be up to 90 percent, as determined by the State Conservationist or Designated Conservationist.

(2) The cost-share payments to a participant under the program will be reduced proportionately below the rate established by the State Conservationist or Designated Conservationist, or the cost-share limit as set in paragraph (c) of this section, to the extent that total financial contributions for a structural practice from all public and private sources exceed 100 percent of the actual cost of the practice.

(b) Determining Incentive Payment levels. NRCS may provide incentive payments to participants for performing a land management practice or to develop a comprehensive nutrient management plan in an amount and at a rate necessary to encourage a participant to perform the practice that would not otherwise be initiated without government assistance. The State Conservationist or Designated Conservationist, with the advice of the State Technical Committee or Local Work Groups, may consider establishing limits on the extent of land management practices that may be included in a contract.

(c) Cost-share rates and incentive payment levels for conservation practices will be established by the State Conservationist or Designated Conservationist with advice from the State Technical Committee and Local Work Groups. The State Conservationist or Designated Conservationist will develop a list of eligible conservation

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practices with varied cost-share rates and incentive payment levels that considers:

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

(2) The degree of treatment of priority natural resource concerns,

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

(4) The longevity of the practice's environmental benefits, and

(5) Other pertinent local considerations.

(d) Practice cost lists that include any structural practice with greater than 50 percent cost share rate are to be approved by the State Conservationist with concurrence of the Regional Conservationist.

§ 1466.24 EQIP payments.

(a) Except as provided in paragraph (b) of this section, the total amount of cost-share and incentive payments paid to an individual or entity under this part may not exceed an aggregate of \$450,000, directly or indirectly, for all contracts entered into during FYs 2002 through 2007.

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

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

(2) States, political subdivisions, and entities thereof will not be considered to be individuals or entities eligible for payment.

(3) To be eligible to participate in EQIP, all individuals applying, either alone or as part of a joint operation, must provide a social security number. Where applicable; American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(4) To be eligible to participate in EQIP, any entity, as identified in 7 CFR part 1400, must provide a list of all members of the entity and embedded entities along with the members' social security numbers and percentage interest in the entity.

(5) With regard to contracts on Indian Land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA

or a Tribal official certifies in writing that no one individual directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, listing of individuals and payments made, by social security number or other unique identification number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.

(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 7 CFR part 1400, subpart G, average adjusted gross income limitation, will be determined at the time of contract approval.

(8) Eligibility for higher cost-share payments in accordance with paragraph (a) of this section will be determined at the time of approval of the contract.

(9) Any participant that utilizes a unique identification number as an alternative to a social security number will utilize only that identifier for any and all other EQIP contracts that the participant is party to. Violators will be considered to have provided fraudulent representation and be subject to full penalties of section 1466.35.

(10) A participant will not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same practice on same land under any other conservation program administered by USDA.

(11) Before NRCS will approve and issue any cost-share or incentive payment, the participant must certify that the conservation practice has been completed in accordance with the contract, and NRCS or other approved Technical Service Provider certifies that the practice has been carried out in accordance with the conservation practice standards of the applicable NRCS field office technical guide.

(12) The provisions of 7 CFR 1412.505 except that refunds will be determined by the State Conservationist.

§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification and the EQIP plan of operations is revised in accordance with NRCS requirements and is approved by the Designated Conservationist.

(b) The participant and NRCS may agree to transfer a contract to another producer. The transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) NRCS may require a participant to refund all or a portion of any financial assistance earned under EQIP if the participant sells or loses control of the land under 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.

§ 1466.26 Contract violations and termination.

(a)(1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS shall give the participant a reasonable time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant will forfeit all rights for future payments under the contract

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and shall refund all or part of the payments received, plus interest determined in accordance with 7 CFR part 1403. NRCS may exercise the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the lifespan of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract, the participant will forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. NRCS will have the option to waive the liquidated damages, depending upon the circumstances of the case.

(3) When making contract termination decisions, 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 hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS determines that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

§ 1466.27 Conservation Innovation Grants (CIG).

(a) *Definitions.* In addition to the terms defined in §1466.3 of this part, the following definitions shall 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 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 pur-

pose of support or stimulation authorized by Federal law, and substantial Federal involvement is not anticipated.

(3) *Grant Review Board* consists of the NRCS Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Review Board makes recommendations for grant awards to the Chief.

(4) *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 this notice.

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

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

(b) *Purpose and scope*—(1) *Purpose.* The purpose of 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, the provisions of 7 CFR 3015 and related Departmental regulations will be used to administer grants under CIG.

(2) *Geographic scope.* Applications for CIG are accepted from the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) *Program scope.* Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in the FEDERAL REGISTER. In addition, at the Chief's discretion, each State Conservationist may implement a separate State-level component of CIG.

(4) *Program focus.* 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) *Innovative conservation projects or activities.* For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:

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

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

To be given priority consideration, the innovative project or activity:

(iii) Will have been studied sufficiently to indicate a good probability for success;

(iv) Demonstrates, tests, evaluates, or verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;

(v) Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;

(vi) Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and

(vii) Adapts conservation technology, management, or incentive systems to improve performance.

(c) *Availability of funding.* (1) CIG funding will be available for single-or multi-year projects. Funding for CIG will be announced in the FEDERAL REGISTER through a Request for Proposals (RFP). 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 of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception regarding matching funds may be made for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for these projects may derive from in-kind contributions.

(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 grant representative, who will be designated by NRCS.

(4) There are some costs that grantees may not cover using CIG funds, such as costs incurred prior to the effective date of the grant, entertainment costs, or renovation or refurbishment of buildings or facilities. A detailed list of costs not allowed will be published in the RFP.

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

(e) *Eligibility information*—(1) *Organization or individual eligibility.* To be eligible, CIG applicants must be an Indian Tribe; State or local unit of government; non-governmental organization; or individual.

(2) *Project eligibility.* To be eligible, projects must involve landowners who meet the eligibility requirements of §1466.8(b)(1) through (3) of this part. Further, all agricultural producers receiving a direct or indirect payment through participation in a CIG project must meet those eligibility requirements.

(3) *Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes.* Up to 10 percent of the total funds available for CIG may be set-aside for applications from either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, 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) *Application and submission information.* The CIG RFP will contain guidance on how to apply for the grants competition. CIG will be advertised through the FEDERAL REGISTER, the NRCS Web site, and *grants.gov*. Grant applications will be available on the NRCS Web site, or by contacting NRCS at the address provided in the RFP. 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) *Application review and grant awards.* Complete applications will be evaluated by a peer review panel and scored based on the Criteria for Proposal Evaluation identified in the RFP. Scored applications will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief. Final award selections will be made by the Chief. Grant 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 document.

(h) *State component.* (1) At the discretion of the Chief, each State Conserva-

tionist 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 paragraph (h).

(2) Funding availability, application, and submission information for State competitions will be announced through public notices (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 grants competition, with individual grants not to exceed \$75,000.

(4) The State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

(5) Applications will be scored by the State Technical Committee, or a subcommittee thereof, based on the national Criteria for Proposal Evaluation published in the CIG RFP. Scored applications will be forwarded to the State Conservationist, who will make the award selections.

(6) In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in paragraph (c)(2) of this section, the State Conservationist in each participating State will determine if and how to provide additional special consideration to underserved groups.

(i) *Grant agreement.* The CCC, through NRCS, will use a grant agreement with selected grantees to document participation in CIG.

(j) *Patents and inventions.* Allocation of rights to patents and inventions shall be in accordance with USDA regulation 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

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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.

(k) *Violations.* A person found in violation of this section is subject to the provisions contained in 7 CFR part 3015 and related Departmental regulations.

[69 FR 16397, Mar. 29, 2004; 70 FR 1791, Jan. 11, 2005]

Subpart C—General Administration

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with 7 CFR parts 11 and 614. Determination in matters of general applicability, such as payment rates, payment limits, and cost-share percentages, the designation of identified priority natural resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall 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 shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representa-

tive shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS 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 the requirements of the program 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 Technical Service Provider will remain with the certified Technical Service Provider and will not be assumed by NRCS when NRCS authorizes payment.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall 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 U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall 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; or

(3) Misrepresented any fact affecting a program determination, shall 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 shall be terminated.

PART 1467—WETLANDS RESERVE PROGRAM

Sec.

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- 1467.18 Scheme and device.

AUTHORITY: 16 U.S.C. 3837 *et seq.*

SOURCE: 60 FR 28514, June 1, 1995, unless otherwise noted. Redesignated at 61 FR 42141, Aug. 14, 1996.

§ 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (Department) for program implementation and processing outstanding and new applications for enrollment during calendar year 1995 and thereafter.

(b) The Chief, Department, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, Amer-

ican Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) As determined by the Chief and the Administrator of the Farm Service Agency, the Department and the Farm Service Agency will seek agreement in establishing policies, priorities, and guidelines related to the implementation of this part.

(d) The State Conservationist will consult with the State Technical Committee on the development of the rates of compensation for an easement, a priority ranking process, and related policy matters.

(e) The Department may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies.

(f) The Department may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist the Department with educational efforts, easement management and monitoring, outreach efforts, and program implementation assistance.

(g) The Department shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies. The Department may consult with the Forest Service, other Federal or State agencies, conservation districts or other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, the Forest