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**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1466**

**[Docket ID NRCS-2019-0009]**

**RIN 0578-AA68**

**Environmental Quality Incentives Program**

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

**ACTION:** Interim rule.

**SUMMARY:** The Agriculture Improvement Act of 2018 (the 2018 Farm Bill) made changes to the Environmental Quality Incentives Program (EQIP). This interim rule makes conforming changes to EQIP policies and procedures in the regulations. NRCS has responsibility for administering EQIP using funding, facilities, and authorities of the CCC. EQIP helps agricultural producers 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.

**DATES:** *Effective:* **[Insert date of publication in the *FEDERAL REGISTER*].**

*Comment date:* Submit comments on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*].**

*Comment date for Environmental Review:* Submit comments on the draft Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) on or before **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

**ADDRESSES:** We invite you to submit comments on this document. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of this document. You may submit comments by the following method:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID NRCS-2019-0009. Follow the online instructions for submitting comments.

All written comments received will be publicly available on [www.regulations.gov](http://www.regulations.gov).

A copy of the draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from either of the following web sites:

[www.regulations.gov](http://www.regulations.gov) or

<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=nrcsep rd1504015>. A hard copy may also be requested in one of the following ways:

- Via mail: [karen.fullen@usda.gov](mailto:karen.fullen@usda.gov) with “Request for EA” in the subject line; or
- A written request: Karen Fullen, Environmental Compliance Specialist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, ID 83709.

**FOR FURTHER INFORMATION CONTACT:** Donna Hopwood; phone: (202) 720-0675; or email: donna.hopwood@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Agriculture Improvement Act of 2018 (2018 Farm Bill) has reauthorized and amended EQIP. EQIP is implemented under the general supervision and direction of the Chief of the Natural Resources Conservation Service (NRCS).

The information below demonstrates how NRCS provides technical and financial assistance to producers through EQIP to—

- Change tillage practices to enhance soil resources by sustaining tilth, moisture control, nutrients, and overall soil health;
- Replace or improve the management of irrigation systems to conserve scarce water resources. EQIP is also used to manage nutrient applications to protect water quality;
- Manage grazing to sustain plant biodiversity and protect rare species and to assure adequate forage is available, thus helping to maintain watershed health and enhance water quality;
- Apply energy efficient practices that reduce energy consumption (e.g., reduced tillage conserves fuel, energy efficient lighting);
- Implement conservation practices that sequester carbon or capture methane emissions and greenhouse gases which contribute to climate change;

- Implement conservation practices specific to producers' resource needs, from over 160 available conservation practices, to sustain and improve the health of natural resources on the land and provide public benefits;
- 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 effects of treatment in comparison to existing or benchmark conditions. Differences may be expressed by reduced nutrients, improved water quality, and reduced soil erosion based upon scientific, quantitative, visual, or other means. NRCS assesses resource conditions through scientifically developed assessment tools and guides that may use client input, planner observation, procedural and deductive methods, and predictive methods. These assessment tools and guides include, but are not limited to, soil erosion prediction tools, wildlife habitat assessment tools, rangeland health assessments, and soil health assessments.

Estimated or projected impacts are used as a basis for applicants to make informed conservation decisions and to help NRCS determine which projects to approve for EQIP assistance.

EQIP was first authorized in 1996, with an initial allocation of \$130 million. Since then, through fiscal year (FY) 2018, NRCS has entered into hundreds of thousands of contracts and provided over \$15 billion in financial assistance to help agricultural

producers apply conservation practices. The agency has evaluated 22 years of program implementation and has assessed opportunities to improve program administration. The changes in this rule are the results of this evaluation and the statutory changes authorized by the 2018 Farm Bill.

NRCS uses a competitive process to achieve the greatest conservation benefits in coordination with EQIP statutory priorities. NRCS establishes National, State, and local priorities and uses scientifically-based ranking tools to assess and rank applications, against these priorities to determine which applications are to be funded. NRCS in the National Office establishes national priorities, and States must incorporate these national priorities along with State and local priorities into the ranking tool used at the State level. These priorities are 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. NRCS also utilizes funding pools 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.

Each application submitted for consideration in a given funding pool is ranked using scientifically-based assessment evaluation criteria and tools which provide a relative score that reflects the expected conservation benefit of the proposed project. State Conservationists 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 cutoff 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 ensure environmentally and economically effective distribution of funding through a process of fair and open competition that addresses priority resource concerns.

Each fiscal year, State Conservationists:

- Publish program priorities;
- Allocate available funds to State funding pools;
- Publish associated ranking criteria to State program websites available at: <http://www.nrcs.usda.gov/wps/portal/nrcs/sitenav/national/states/>; and
- Allocate funds to each application pool and adjust funding between pools to address shortages or to redistribute surplus funds, if needed. Statutory allocation levels, such as the requirement to provide at least 50 percent of the funding for livestock and 10 percent of the funding for wildlife, are met as national goals through funding pool opportunities established by State Conservationists.

The statutory changes made by the 2018 Farm Bill include, but are not limited to—

- Expanding the EQIP purpose to include new or expected resource concerns, adapting to, and mitigating against, increasing weather volatility, and addressing drought resiliency measures;
- Changing advance payments from “not more than” to “at least 50 percent” of all costs related to purchasing materials or contracting with a requirement for producers to be notified at the time of enrollment of the advance payment

option with respect to each practice that has such costs, and that the producer's decision be documented;

- Adding a new provision for increased payments for high-priority practices, which provides the State Conservationist the option to designate up to 10 practices to be eligible for increased payments, not to exceed 90 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training;
- Decreasing the livestock funding minimum from 60 percent to 50 percent for FY 2019 through 2023;
- Increasing the wildlife funding minimum from 5 percent to 10 percent for FY 2019 through 2023;
- Providing a maximum term of 10 years for contracts entered into solely for the establishment of wildlife management practices;
- Authorizing certain entities (including a State, irrigation district, groundwater management district, acequia, land-grant mercedes, or similar entity) which are not producers to be eligible to enter into an EQIP contract for implementation of water conservation or irrigation efficiency practices, and, authorizing the Secretary of Agriculture to waive the adjusted gross income (AGI) and EQIP payment limitations for those contracts. If a waiver is authorized, the Secretary may establish a separate payment limitation for the contract to which the waiver applies;

- Introducing new EQIP Incentive Contracts, which can address up to three priority resource concerns for each of the relevant land uses within State-identified watersheds or other areas of high priority;
- Encouraging streamlined and coordinated procedures between EQIP and Conservation Stewardship Program (CSP), including applications, contracting, conservation planning, conservation practices, and related administrative procedures;
- Authorizing funding for EQIP at:
  - \$1,750 million for FY 2019
  - \$1,750 million for FY 2020
  - \$1,800 million for FY 2021
  - \$1,850 million for FY 2022
  - \$2,025 million for FY 2023

### **USDA Farm Bill Listening Session**

The Farm Production and Conservation (FPAC) Mission Area hosted a listening session on February 26, 2019, to obtain initial input on 2018 Farm Bill implementation. USDA sought public input regarding changes to programs implemented by the Farm Service Agency, the Risk Management Agency (RMA), and NRCS. NRCS considered stakeholder input when making discretionary decisions regarding program implementation. In addition to encouraging oral testimony, FPAC also encouraged submission of written comments and the comments received have been made available on <http://www.regulations.gov>.

NRCS received 35 comments regarding the need to evaluate the impact of water conservation and irrigation efficiency projects on grasslands, fish and wildlife habitat, wetlands, and ground water recharge. Some comments recommended the prioritization of projects that improve agricultural water delivery, limit the expansion of irrigated land, and ensure more water conservation. Others pushed for watershed-wide projects, oversight mechanisms to track fund spending and outcomes, and implementation of an effective project rating system. A few requested additional funding for Western producers who are facing water challenges.

NRCS received 26 comments that underscored the importance of State wildlife funding pools to ensure that EQIP funds are used for species and habitats identified as priorities in State, regional, and national wildlife plans. Some recommended the immediate implementation of the 10-percent-funding increase and using the funds to consider wildlife coexistence practices. Others advocated longer-term contracts, additional wildlife-specific technical assistance, landscape-scale project areas, and fund oversight tools, such as public annual reports.

NRCS received 11 comments on wildlife habitat contracts. The comments pushed for prioritizing longer-term wildlife contracts and ensuring that these contracts only fund practices designed to deliver wildlife habitat benefits. Others recommended working with third parties, such as nongovernmental organizations, to coordinate projects and promote short-term contracts to enhance program outcomes.

NRCS received 16 comments related to administration and program delivery. Many recommended streamlining the program application process, providing additional guidance and information on high priority resource concerns, rankings, and practices, and

ensuring fair access for most producers to EQIP funds (i.e., property of producers with heirs, Indian Tribes). Other comments urged stricter enforcement of EQIP statutory requirements, use of EQIP funds for oyster restoration, and prioritization of contracts that implement nutrient management and improve habitat and water resources.

Additionally, support for wildlife habitat projects received the majority of the comments related to the new conservation incentive contracts. NRCS received 11 comments supporting the identification of wildlife habitat as a priority resource concern and prioritizing practices related to grazing management and those that can deliver considerable environmental benefits. Others recommended mechanisms to coordinate resource concerns and to determine incentive practice eligibility and proper payment options.

NRCS received 11 comments that advocated for outreach and education for organic producers regarding the new EQIP payments for organic initiatives. Some recommended the development of a funding allocation similar to CSP and the consideration of existing organic management plans. Other comments emphasized additional payments during the transition period (from traditional to organic), helpful tools and resources showing how EQIP practices support organic agriculture, and strong support for smaller organic projects.

NRCS received nine comments mostly supporting the Soil Health Demonstration Trial for EQIP projects. Others called for better soil health planning standards, utilization of existing resources (i.e., Soil Health Partnership and the Operational Tillage Information System), and evaluation tools to determine project rating, economic outcomes, and public benefits.

NRCS received seven comments focusing on increased payments for high-priority practices. Most comments underlined the inclusion of practices that address the goals of State wildlife action plans and other State and local plans involving watershed rehabilitation and drought management. Others recommended careful implementation of the increased payment provision to ensure adequate funding for other EQIP contracts.

NRCS received three comments that recommend ending funding support for the expansion of large livestock operations, and instead, focusing on grazing systems and practices that can benefit wildlife and water quality.

NRCS received three comments pushing for broader producer outreach and immediate implementation of the EQIP advanced payment option. These comments emphasized that outreach needs to include beginning, veteran, and socially disadvantaged producers.

Finally, NRCS received a comment that recommended using the new EQIP provision on precision conservation and agriculture for practice installment and annual payments.

NRCS evaluated the changes made by the 2018 Farm Bill and the comments received during the listening session and is hereby promulgating this interim rule to incorporate the 2018 Farm Bill changes to EQIP program administration. 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 to improve readability.

## **SUMMARY OF KEY CHANGES TO EQIP REGULATIONS**

The regulation has long been organized into three subparts: (1) Subpart A—General Provisions, (2) Subpart B—Contracts, and (3) Subpart C—General Administration. To improve the readability and clarity of the regulations, NRCS has moved the provisions in §1466.27, the section addressing administration of the Conservation Innovation Grants (CIG), to subpart C, and moved the sections related to General Administration to a new subpart E, with redesignation of sections appropriate to such a change. To incorporate regulations necessary to implement the new Incentive Contracts under EQIP, NRCS has added a new subpart D. Below is a summary of the changes made to each subpart based on the changes made to EQIP by the 2018 Farm Bill.

### **Changes to Sections in Subpart A—General Provisions**

#### **§ 1466.1 Applicability**

Section 1466.1 sets forth the purpose, scope, and objectives of EQIP. Pursuant to changes made by §2302 of the 2018 Farm Bill, the interim rule updates §1466.1 to reiterate the updated statutory language. The interim rule also changes the effective date of this section to acknowledge that each EQIP contract is subject to the regulations that are in effect at the time the EQIP contract is enrolled. EQIP's fundamental purpose—assisting agricultural producers with implementing conservation practices to provide environmental benefits and to comply with or avoid environmental regulation—has been broadened to add specifically addressing new or expected resource concerns, adapting to and mitigating against increasing weather volatility, and drought resiliency measures.

#### **§ 1466.2 Administration**

Section 1466.2 describes the roles of NRCS, State technical committees, and local working groups. The 2018 Farm Bill amends how EQIP interacts with the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985 (known as the 1985 Farm Bill). The 2014 Farm Bill identified EQIP as a covered program under RCPP and authorized the Chief to waive nonstatutory, discretionary provisions and operational procedures under EQIP contracts where EQIP was being implemented through RCPP. However, since the 2018 Farm Bill no longer requires that RCPP be implemented through EQIP or the other covered programs, NRCS removed the regulatory language to this section that addressed EQIP implementation under RCPP. NRCS retains the authority for the Chief to waive nonstatutory, discretionary provisions where the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program.

### **§ 1466.3 Definitions**

Section 1466.3 sets forth definitions for terms used throughout this regulation. NRCS is amending several definitions to conform to the 2018 Farm Bill amendments and to address other administrative matters. Specifically, this interim rule amends §1466.3 by adding or modifying the following definitions:

- Animal feeding operation (AFO);
- Eligible land;
- Estimated income foregone;
- Forest management plan;
- High priority area;
- Incentive practice;

- Priority resource concern;
- Semi-public;
- Soil remediation;
- Soil testing; and
- Water management entity.

Given the overlap between the definition for the term “eligible lands” and “agricultural lands,” NRCS has removed the definition for “agricultural lands” to reduce confusion.

#### **§ 1466.4 National priorities**

Section 1466.4 establishes a list of priorities, consistent with the statute, that describes the types of resource concerns that NRCS has determined to be the greatest opportunity for natural resource conservation. In addition, it allows for change and adaptation to this listing as new information comes to light. The 2018 Farm Bill added “increased weather volatility” as a specific resource concern, and this rulemaking incorporates that change. NRCS made other minor editorial changes to improve style and clarity.

#### **§ 1466.5 Outreach Activities**

Section 1466.5 generally establishes the basis for NRCS to market EQIP’s resource conservation benefits and its subcomponents to producers so that they are aware of the program’s potential to assist them with resource concerns on their operations. This section contains special outreach authorization for historically underserved producers. In addition to several minor stylistic edits to improve clarity, this rulemaking has added a

paragraph specifically including messaging related to advance payments and subsequent election as examples of special outreach.

To help producers understand conservation opportunities, the 2018 Farm Bill requires that NRCS establish and maintain a publicly available conservation practice database that provides a compilation and analysis of effective conservation practices and a list of recommended new and effective conservation practices. The 2018 Farm Bill also requires the Secretary to identify available data sets within the Department of Agriculture regarding the use of conservation practices and the effect of such practices on farm and ranch profitability (including such effects relating to crop yields, soil health, and other risk-related factors). NRCS considers estimated economic impact in its conservation planning process, including in the development of conservation practice standards. Since producers must consider the potential estimated economic impact to their particular operation when choosing whether to voluntarily adopt conservation practices through EQIP, NRCS is taking this opportunity to request public comment on how NRCS can best assist producers to understand the potential estimated economic impact of conservation practice adoption to inform their program decisions.

#### **§ 1466.6 Program Requirements**

Section 1466.6 lays out the general scope of what EQIP is and does. It sets forth criteria for applicant eligibility, including that the applicant must have control of the land on which EQIP practices are to be implemented. The 2018 Farm Bill also expanded eligibility regarding with whom NRCS can enter into an EQIP contract. In particular, NRCS may enter into EQIP contracts with a State, irrigation district, groundwater management district, acequia, land grant–merced, or similar entity under a streamlined

contracting process to implement water conservation or irrigation practices under a watershed-wide project that will effectively conserve water, provide fish and wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Secretary. NRCS has defined these entities as “water management entities.”

NRCS added provisions related to entering contracts with water management entities to implement water conservation or irrigation practices in certain circumstances.

NRCS introduced criteria for approving waivers and applying a different payment limitation to ensure the focus of EQIP assistance remains on practices that directly benefit producers with resource concerns on their operations. Additionally, the criteria help specify how this provision will be implemented, especially since water management entities can apply to RCPP as an eligible partner for irrigation-related infrastructure projects and that these types of projects are also eligible for assistance under the Watershed Protection and Flood Prevention Act.

Therefore, NRCS incorporated into this interim rule criteria for approving payment and AGI waivers, including the number of producers benefitted, whether the project is in conjunction with EQIP assistance being provided to identified producers who require the project in order for the overall project to be successful, and the establishment of a new payment limitation that ensures that such contracts address more site-specific concerns rather than systemic upgrade requirements. More particularly, NRCS has decided to limit these projects by authorizing a new payment limitation for contracts entered into by these specific entities at \$900,000 between FY 2019 through FY 2023 if the projects qualify for a payment and AGI waiver. This new payment limitation for

these entity-irrigation contracts is twice the payment limitation established for payments under contracts to individual producers.

Since the interim rule authorizes a waiver of the aggregate payment limitation for contracts with water management entities under this section, NRCS specifically requests comments on how this waiver should operate and whether the \$900,000 payment limitation has been established at an appropriate level. NRCS believes that this new authority to enter into an EQIP contract directly with water management entities should not conflict or compete with other NRCS assistance opportunities. Additionally, related to identifying the situations where NRCS should provide assistance to these projects, NRCS specifically requests public comment about whether additional parameters are needed for identifying “adjacent lands” eligible for such projects

Other changes were made to improve style and clarity.

#### **§ 1466.7 EQIP plan of operations**

This section describes the requirements of the EQIP plan of operations, which is a component of the EQIP contract. Section 1240E(a)(3) as amended by the 2018 Farm Bill inserted the term “progressive” to describe the implementation of a comprehensive nutrient management plan (CNMP). Therefore, NRCS amends the regulatory provisions to remove the requirement that a participant must have implemented a developed CNMP by the end of the contract but requires that any conservation practices in the EQIP plan of operation must be implemented consistent with a CNMP. Language regarding irrigation-related practices and water conservation was also slightly modified for clarity.

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

This section describes how NRCS determines eligible conservation practices. NRCS made several minor edits for clarity.

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

This section describes the use of technical services providers (TSPs). NRCS incorporates use of the TSP acronym to this section.

#### **Changes to Sections in Subpart B—Contracts**

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

This section addresses how producer applications are submitted and selected for funding. NRCS makes several minor edits for clarity.

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

This section identifies elements contained within an EQIP contract and the responsibilities of the participant who is party to the EQIP contract. Also, it 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 needed to maintain the conservation practice for its intended lifespan. NRCS amends CNMP language to include “progressive” implementation by removing the requirement that the CNMP must be implemented by the end of the contract and clarifies the timeline parameters for EQIP contract implementation and the consequences for not complying with those parameters. NRCS also incorporates language to waive the \$450,000 contract limitation and establish a \$900,000 contract limitation for certain projects with joint operations, group projects, or contracts where NRCS has waived the

payment limitation for a water management entity. NRCS also included language to specify that NRCS may decline an application for water conservation and irrigation efficiency projects with water management entities if that project would be better suited with another NRCS program.

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

This section addresses the participant's responsibility for conservation practice O&M. NRCS makes only slight grammatical corrections.

#### **§ 1466.23 Payment rates**

This section addresses payment rates and payment eligibility. Section 1240B as amended by the 2018 Farm Bill authorized increased payment rates for certain high-priority practices. The 2018 Farm Bill also authorized increased payment rates for practices that address source water protection. NRCS incorporates these changes by adding a new paragraph authorizing such increased payments.

The 2018 Farm Bill revised section 1240B(d)(7) of the 1985 Farm Bill to authorize States to designate high priority practices that will be eligible for higher payment rates, subject to approval from the Secretary. NRCS at the State level will provide notice of the high priority practices for which a higher payment rate is available based on the criteria identified in section 1240B(d)(7).

#### **§ 1466.24 EQIP payments**

This section provides direction on payment eligibility and payment limitations. Due to the change to §1466.1 noted above, the language regarding date of contract was removed. As stated, any changes made to this section only affect future contracts. Removal of that language reduces wordiness and improves clarity. NRCS updated the

payment limitations for organic production from annual limits to an aggregate limit from FY 2019 through FY 2023. NRCS modified the regulatory levels allowed for advance payments to account for changes made in Section 1240B(d)(4)(B) of the 1985 Farm Bill. NRCS made other organizational and editorial adjustments that did not affect the substance of the provisions.

#### **§ 1466.25 Contract modifications and transfers of contract rights**

This section sets forth the procedures for when and how an EQIP contract can be modified and sets out the process and consequences of a transfer of land during the term of an EQIP contract. NRCS made several stylistic and organizational changes to improve clarity. NRCS added a paragraph to clarify how NRCS will treat the implementation of conservation practices during any period in which a parcel has been transferred, but contract transfer has not yet been approved. These changes align EQIP transfer provisions more closely with similar CSP provisions.

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

This section sets forth the policies and procedures for contract termination when the participant violates the terms of an EQIP contract. NRCS clarified that certain violations may place a participant into suspension or debarment. NRCS will follow suspension and debarment requirements at 7 CFR part 1407, including providing any such participant due process prior to suspending or debarring the participant from future eligibility.

## **Changes to Sections in Subpart C—Conservation Innovation**

Subpart C is revised by moving its provisions to a new subpart E and incorporating provisions addressing the Conservation Innovation Grants (CIG) administration at §1466.27 as new sections under subpart C.

In addition to organizing the CIG provisions into several sections, this subpart addresses administration of the On-farm Conservation Innovation Trials (OFCIT), which includes the Soil Health Demonstration (SHD) Trial.

The CIG section (formerly 1466.27) has been reorganized into the following six sections, as set forth below.

### **§ 1466.30 Definitions**

This section, the former §1466.27(a), sets forth the definitions of terms to be used consistently throughout this subpart. The term “EQIP eligible” was removed from the definitions section as the term was not used anywhere else in the regulation.

### **§ 1466.31 Purpose and scope**

This section, the former §1466.27(b), sets out the broad policy objectives and criteria for implementing CIG and its related components. NRCS has modified references to the use of online methods to award grants to clarify that there may be multiple competitions each fiscal year. NRCS made various changes to improve the section’s structure and style without affecting its substance.

### **§ 1466.32 Conservation Innovation Grant funding**

This section, the former §1466.27(c), sets out how CIG is funded and what payment limitations may apply. The set-aside of up to 10 percent of total CIG funds for

historically underserved or veteran farmers or ranchers or community-based organizations has been moved here. NRCS incorporated other edits to improve clarity.

### **§ 1466.33 Conservation Innovation Grant administration**

This section, the former §1466.27(d) through (f), provides the framework for how NRCS administers CIG, including policies and procedures related to awarding CIG grants. Paragraph (a) of this section now identifies that applications should address national or State program priorities as published by NRCS. Paragraph (b) of this section clarifies that any individual or non-federal entity may be eligible for a CIG payment, provided that the payment either directly or indirectly benefits a producer who is eligible for EQIP participation. NRCS adds a paragraph (c) to identify that NRCS will publish annually detailed guidance on how to apply for the grants competitions to address announced national or State program priorities.

### **§ 1466.34 Award determinations**

This section, the former §1466.27(g), explains the criteria that NRCS will consider when determining award grantees and award amounts. NRCS made minor changes to the style and structure of the language to set out each step in the awards determination process.

### **§ 1466.35 State-level Conservation Innovation Grant component**

This section, the former §1466.27(h), details the use of State-level use and distribution of CIG resources. Paragraph (d) clarifies that each State may elect to focus on priority resource concerns for that State.

### **§ 1466.36 Intellectual property**

This section, formerly §1466.27(i), establishes guidelines for intellectual property rights for any newly patented technology developed under this subpart. NRCS has made minor edits to improve readability.

#### **§ 1466.37 On-farm Conservation Innovation Trials (OFCIT)**

This section implements and develops OFCIT to test new and innovative approaches to conservation.

#### **§ 1466.38 Soil Health Demonstration (SHD) Trial**

This section of focus for OFCIT addresses the ability of soil health strategies to capture and retain carbon.

#### **Sections in new Subpart D—Incentive Contracts**

Subpart D is a new subpart and addresses the new enrollment option, EQIP incentive contracts, as created by section 2304 of the 2018 Farm Bill. This new subpart has the following sections:

#### **§ 1466.40 High priority areas**

This section sets out the process and requirements for high priority areas within each State that form the backdrop for the new incentive contracts.

#### **§ 1466.41 Incentive contract selection**

This section specifies how the incentive contract process will deviate from the standard EQIP contract selection process. In particular, NRCS will identify which practices qualify as incentive practices for each land use within each high priority area based on the priority resource concern(s) identified for that land use. Thus, there is no standard list of practices that will universally apply. It will depend on future determinations by State Conservationist with input from the State Technical Committees

as to what the high priority areas are and what the (up to) three priority resource concerns are for each land use within each high priority area. NRCS does maintain a database of practices that apply to resource concerns within each land use, but which of those practices will be high priority will vary based on determinations within each State.

#### **§ 1466.42 Incentive contract requirements**

This section lists all the terms and conditions that are required components of an incentive contract. Many of these terms and conditions are similar to those terms and conditions included in a standard EQIP contract; the most notable distinctions are differences to the contract period and payment rates, which are covered in separate sections below.

#### **§ 1466.43 Incentive contract period**

This section highlights the criteria for setting the term for an incentive contract. Incentive contracts will be for a period from 5 to 10 years.

#### **§ 1466.44 Incentive payment rates and restrictions**

This section sets the parameters for incentive payments. In addition to the payment for practice implementation, which is similar to the standard EQIP implementation payment, incentive contracts offer annual payments to address operations and maintenance costs as well as income foregone. NRCS also established in this interim rule an aggregate payment limitation of \$200,000 for a person or legal entity to conform incentive contract implementation to contracts entered into under the CSP, thus ensuring that the new enrollment option supports a participant's ability to transition to CSP eligibility.

## **New Subpart E—General Administration**

Subpart E of the EQIP regulation was formerly subpart C, and it 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 2018 Farm Bill changes do not impact the regulatory provisions at subpart E.

## **Effective Date, Notice and Comment, and Paperwork Reduction Act**

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to benefits and therefore is exempt from the APA requirements. Further, the regulations to implement the programs of chapter 58 of title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. ch. 35), and
- To use the authority under 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effect date of 60-days after publication to allow for Congressional Review. This rule is major under

the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the regulations expeditiously to provide assistance to producers, NRCS and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, NRCS and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the *Federal Register*.

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 relevant section of either the 2018 Farm Bill or the 1985 Farm Bill. All comments received on or before the closing date for comments will be considered. NRCS will review and respond to the public comments in the EQIP final rule.

#### **Executive Orders 12866, 13563, 13771, and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 13563, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on <https://www.regulations.gov/>.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with federal regulations for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. OMB guidance in M-17-21, dated April 5, 2017, specifies that “transfer rules” are not covered by Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule and is not covered by Executive Order 13771.

## Cost Benefit Analysis

The 2018 Farm Bill makes several changes to EQIP. The changes include:

- Making a State, irrigation district, groundwater management district, acequia, land grant-mercedes, or similar entity eligible for EQIP payments,
- Requiring targeting of at least 10 percent of EQIP funds to wildlife conservation practices,
- Reducing EQIP funds targeted for livestock to 50 percent, and
- Creating various incentives to address resource concerns in identified watersheds and other high priority areas.

Most of this rule's impacts consist of transfer payments to producers for completed conservation practices under EQIP contracts. The 2018 Farm Bill increases EQIP funding over 2014 Farm Bill funding by 22 percent on an annualized basis to \$1.84 billion per year. From FY2014-2018, EQIP was authorized at \$8.0 billion, but annual funding restrictions resulted in actual authority being \$7.51 billion, for an annualized amount of \$1.50 billion. In contrast, the authorized level for EQIP for FY2019-2023 is \$9.18 billion<sup>1</sup> (assuming future funding caps are set at authorized amounts).

Additionally, EQIP funds remain available until expended, meaning that any unobligated balance at the end of a fiscal year is available for obligation in the subsequent year.

Conservation practices funded through EQIP will continue to:

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<sup>1</sup>Includes the \$1.75 billion authorized level in the 2018 Farm Bill for FY 2019 even though the amount was reduced by the sequester and other transfers to \$1.61 billion.

- contribute to improvements in soil health and reductions in water and wind erosion on cropland, pasture and rangeland;
- Reduce nutrient losses to streams, rivers, lakes and estuaries;
- Increase wildlife habitat; and
- Provide other environmental benefits.

Further, continued implementation of practices that treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality (such as from reduction in methane emissions or reduced risk of algal blooms). NRCS estimates that the cost,<sup>2</sup> from both public and private sources, of implementing EQIP conservation practices will be \$13,640.2 million dollars (FY2019–2023), assuming a historical average participant cost of 40 percent and a technical assistance share of 27 percent.

Changes in funding levels for EQIP livestock and wildlife practices will alter to a minor extent the types of conservation practices that are funded. From FY 2014-2018, wildlife practices accounted for 7.6 percent of EQIP funds through wildlife and landscape initiatives and 16 designated wildlife conservation practices. The remaining 2.4 percent increase in funding to wildlife needed to meet the new 10 percent level will likely occur through greater support for existing wildlife initiatives and potentially target additional wildlife habitat development efforts through new initiatives. With respect to livestock, over 60 percent of EQIP funds went to livestock-related practices during FY 2014 through 2018, but the 2018 Farm Bill reduced the target to 50 percent for each of fiscal

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<sup>2</sup>Public costs include total technical assistance and financial assistance funds. Private costs are out-of-pocket costs paid voluntarily by participants.

years 2019 through 2023. With greater EQIP funding overall, the amount of funding being provided for the implementation of livestock conservation practices should not change significantly.

To address increasing demands on the nation's water supply, the 2018 Farm Bill expands EQIP eligibility to water management entities like irrigation districts, ground water management districts, and acequias, along with providing the Secretary with the authority to waive adjusted gross income, contract, and payment limits to encourage continued efforts in agricultural water conservation. In some states, particularly in the West, these water management entities may increase competition for funding and enhance conservation benefits per dollar spent. The impacts, however, on the allocation of EQIP funding will be limited. The 2018 Farm Bill directs NRCS to maintain current funding allocations to states, limiting the impact nationally. Also, NRCS proposes in this rule establishing a payment limit of \$900,000 on all contracts with water management entities.

The 2018 Farm Bill establishes incentive contracts to address up to three priority resource concerns for a given watershed, or other region, or area. Contracts will range from a minimum of 5 up to 10 years in length and provide an annual payment and an incentive practice payment. The impact of these new incentive contracts is uncertain, particularly regarding benefits per dollar. Overall, given the current demand for regular enrollment in EQIP, and the currently uncertain impacts that incentive contracts will have, the aggregate benefits from these new incentive contracts may be limited.

Increasing the payment limit for participants in the organic initiative to \$140,000 over the period FY 2019 through 2023, will likely have little impact on EQIP program

performance. This is because existing organic initiative contracts are usually well below the multi-year payment limit of \$80,000 previously set by 2014 Farm Bill. Currently, organic participants who exceed the organic initiative payment limit use other EQIP funding mechanisms. With the increase in the organic initiative limit to \$140,000, more organic applicants will be able to make use of the organic initiative and consequently need only compete with other organic operations for funding.

### **Clarity of the Regulation**

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 rule, we invite your comments on how to make the rule 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), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because no law requires that a proposed rule be published for this rulemaking initiative. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in EQIP and in doing so receive its benefits. Compliance with the provisions of EQIP regulations is only required for those entities who choose to participate in this voluntary program.

## **Environmental Analysis**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). The 2018 Farm Bill requires minor changes to NRCS conservation programs, and there are no changes to the basic structure of the programs. The analysis has determined there will not be a significant impact to the human environment and as a result, an environmental impact statement (EIS) is not required to be prepared (40 CFR sec. 1508.13). While OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to

require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. The Environmental Assessment (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.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed federal financial assistance and direct federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may

be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on 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, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

### **Executive Order 13175**

This 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 have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA’s Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule may have substantial direct Tribal implication that may require Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the two 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, D.C., and on June 26-28, 2019, in Sparks, NV.

For the May 1, Tribal consultation, the portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title II session. There were no specific comments from Tribes on the EQIP rule during the Tribal consultation. If a tribe requests additional consultation, NRCS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

Separate from Tribal consultation, communication, and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about the regulation changes. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation 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, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests. Additionally, NRCS will be holding several sessions with Indian Tribes and Tribal entities across the country in fiscal year 2019 to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4), requires federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with federal

mandates that may result in expenditures of \$100 million or more in any 1 year 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 UMRA, for State, local, and Tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

### **Federal Assistance Programs**

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies:

10.912—Environmental Quality Incentives Program.

### **E-Government Act Compliance**

NRCS and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

Administrative practice and procedure, Animal welfare, Natural resources, Soil conservation, Water resources

The CCC revises 7 CFR part 1466 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 Application for contracts and selecting applications.
- 1466.21 Contract requirements.
- 1466.22 Conservation practice operations and maintenance (O&M).
- 1466.23 Payment rates.
- 1466.24 EQIP payment restrictions and exceptions.
- 1466.25 Contract modifications and transfers of contract rights.
- 1466.26 Contract violations and terminations.

### **Subpart C — Conservation Innovation**

- 1466.30 Definitions.
- 1466.31 Purpose and scope.
- 1466.32 Conservation innovation grant funding.
- 1466.33 Conservation innovation grant administration.
- 1466.34 Award determinations.
- 1466.35 State-level conservation innovation grant component.
- 1466.36 Intellectual property.
- 1466.37 On-Farm Conservation Innovation Trials.
- 1466.38 Soil Health Demonstration trial.

### **Subpart D — Incentive Contracts**

- 1466.40 High priority areas.
- 1466.41 Incentive contract selection.
- 1466.42 Incentive contract requirements.
- 1466.43 Incentive contract period.
- 1466.44 Incentive payment rates and restrictions.

### **Subpart E — General Administration**

- 1466.50 Appeals.
- 1466.51 Compliance with regulatory measures.
- 1466.52 Access to operating unit.
- 1466.53 Equitable relief.
- 1466.54 Offsets and assignments.
- 1466.55 Misrepresentation and scheme or device.

1466.56 Environmental credits for conservation improvements.

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

## **Subpart A — General Provisions**

### **§ 1466.1 Applicability.**

(a) *Purposes.* (1) 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.

(2) Through EQIP, NRCS provides technical and financial assistance to eligible agricultural producers, including nonindustrial private forest (NIPF) landowners and Indian Tribes, to help implement conservation practices which address soil, water, and air quality; wildlife habitat; nutrient management associated with crops and livestock; pest management; surface and groundwater conservation; irrigation management; drought resiliency measures; adapting to and mitigating against increasing weather volatility; energy conservation; and related resource concerns.

(3) 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.

(4) The purposes of the program are achieved by planning and implementing conservation practices on eligible land to address identified, new, or expected resource concerns.

(b) *Availability.* 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) *Applicability.* Each contract enrolled into EQIP, is subject to the regulations in effect on the date it is enrolled.

**§ 1466.2 Administration.**

(a) *The Commodity Credit Corporation (CCC) funds, facilities, authorities.*

Because the funds, facilities, and authorities of the CCC are available to NRCS for carrying out EQIP, each reference to NRCS in this part also refers to the CCC's funds, facilities, and authorities where applicable.

(b) *Locally-led conservation.* (1) 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.

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

(i) Recommendations for program priorities and criteria;

(ii) Identification of priority resource concerns;

(iii) Recommendations about which conservation practices will be effective to treat identified priority resource concerns; and

(iv) Recommendations of program payment rates for payment schedules.

(c) *Delegations.* 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.

(d) *Waiver.* The Chief may modify or waive a nonstatutory, discretionary provision of this part if the Chief determines the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program;

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

### **§ 1466.3 Definitions.**

The definitions in this section apply to this part and all documents issued in accordance with this part, unless specified elsewhere in this part:

*Agricultural operation* means a parcel or parcels of land whether contiguous or noncontiguous, 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, or cultivation practices that are substantially separate from other operations.

*Animal feeding operation (AFO)* means a lot or facility (other than an aquatic animal production facility) where the conditions in this definition 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 by-products, 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 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.

*Chief* means the Chief of NRCS, U.S. Department of Agriculture (USDA), or designee.

*Comprehensive nutrient management plan (CNMP)* 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 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, soil testing, soil remediation, 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.

*Eligible land* means land on which agricultural commodities, livestock, or forest-related products are produced, and specifically includes:

- (1) Cropland;
- (2) Grassland;

- (3) Rangeland;
- (4) Pasture land;
- (5) Nonindustrial private forest land; and
- (6) Other agricultural land (including cropped woodland, marshes,

environmentally sensitive areas as identified by NRCS, and agricultural land used for the production of livestock) on which identified or expected resource concerns related to agricultural production that may be addressed by a contract under EQIP as determined by the Chief.

*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, timing, and extent 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 benefits, 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, income foregone is one of the costs associated with practice implementation as recorded in a payment schedule.

*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. (See <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/> to access your State FOTG.)

*Forest management plan* means a site-specific plan that is prepared according to NRCS criteria by a professional resource manager, in consultation with the participant, and is approved by NRCS. 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 plan approved by the State forester or Indian Tribe; or another plan determined appropriate by NRCS. 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.

*High priority area* means a watershed (or other appropriate region or area within a State) wherein the Chief, in consultation with the State Technical Committee, has identified one or more priority resource concerns.

*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, limited resource farmer or rancher, or veteran farmer or rancher.

*Incentive practice* means a practice or set of practices approved by the Chief that, when implemented and maintained on eligible land, address one or more priority resource concerns under a contract entered into under subpart D of this part.

*Indian land* means:

- (1) Land held in trust by the United States for individual Indians or Indian Tribes;
- (2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance;
- (3) Land which is subject to rights of use, occupancy 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 7 CFR part 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 part 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 2 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 2 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 7 CFR part 610.

*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* mean resource issues identified by the Chief, with advice from other federal agencies, Indian Tribes, and State Conservationists, which is used to determine the distribution of EQIP funds and guide local EQIP implementation.

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

*Nonindustrial private forest land (NIPF)* means rural land, as determined by NRCS, 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 O&M 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 or has received 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, maintenance, or training, as well as the estimated income foregone by the participant 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 resource concern, as determined by the Chief, with input from the State Technical Committee, that—

(1) Is identified at the national, State, or local level as a priority for a particular area of a State; and

(2) Represents a significant concern in a State or region.

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

*Semi-public* means entities that are private or public companies that serve a public purpose, i.e. Public utility companies. They often have condemnation authority but are not considered part of the State or State government.

*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.

*Soil remediation* means scientifically based practices, as determined by NRCS, that—

- (1) Ensure the safety of producers from contaminants in soil;
- (2) Limit contaminants in soils from entering agricultural products for human or animal consumption; and
- (3) Regenerate and sustain the soil.

*Soil testing* means the evaluation of soil health, including testing for the—

- (1) Optimal level of constituents in the soil, such as organic matter, nutrients, and the potential presence of soil contaminants (including heavy metals, volatile organic compounds, polycyclic aromatic hydrocarbons, or other contaminants), as determined by NRCS; and
- (2) Biological and physical characteristics indicative of proper soil functioning.

*State conservationist* means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State and the Caribbean and 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. 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:

(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 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(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)).

*Water management entity* means a State, irrigation district, groundwater management district, acequia, land grant–merced, or similar entity that has jurisdiction or responsibilities related to water delivery or management to eligible lands.

*Wildlife* means nondomesticated 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 national priorities in paragraphs (a)(1) through (8) of this section, consistent with statutory resources concerns, include soil quality, water quality and quantity, plants, energy, wildlife habitat, air quality, increased weather volatility, and related natural resource concerns, that may be used in EQIP implementation are:

(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;

(2) The reduction of surface and ground water contamination;

(3) The reduction of contamination from agricultural sources, such as animal feeding operations;

(4) Conservation of ground and surface water resources, including improvement of irrigation efficiency;

(5) 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 the National Ambient Air Quality Standards;

(6) Reduction in soil erosion and sedimentation from unacceptable levels on eligible land;

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

(8) 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 States, 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.**

(a) NRCS conducts outreach activities at the national, State, Tribal, and local levels to ensure that producers whose land has environmental problems or priority resource concerns are aware and informed that they may be eligible to apply for program assistance.

(b) NRCS will make special outreach to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders.

(c) NRCS provides outreach to ensure producer participation is not limited based on the size or type of operation or production system, including small-scale, specialty crop, and organic production.

(d) NRCS will notify historically underserved producers, at the time of enrollment in the program, of the option to receive advance payments under § 1466.24 of this part and document the election of each of these producers.

**§ 1466.6 Program requirements.**

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

(b) *Applicant eligibility.* To be eligible to participate in EQIP, an applicant must—

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

(2) 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 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 Chief may require the applicant to obtain the written concurrence of the landowner to apply a conservation 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 historically underserved producer, and payment eligibility as established by 7 CFR part 1400; and

(7) 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) *Consideration for enrollment of eligible land.* Eligible land, as defined in §1466.3, 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 a working component of the participant's agricultural or 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.

(d) *Eligibility of a water management entity.* (1) Notwithstanding paragraphs (b) and (c) of this section, NRCS may enter into an EQIP contract with a water management entity provided the criteria in paragraphs (d)(1)(i) and (ii) of this section can be met:

(i) The entity is a public or semi-public agency or organization, and

(ii) Its purpose is to assist private agricultural producers manage water distribution systems.

(2) Water conservation or irrigation practices that are the subject of a contract entered into under paragraph (d)(1) of this section shall be implemented on—

(i) Eligible land of a producer; or

(ii) Land that is—

(A) Under the control of the water management entity, and

(B) Adjacent to eligible land of a producer, provided the Chief determines the adjacent land is necessary to support the installation of a practice or system implemented on eligible land.

(3)(i) The Chief may waive the average adjusted gross income limitation set forth in 7 CFR part 1400 or the aggregate payment limitation set forth in §1466.24 of this part for a contract under paragraph (d)(1) of this section if the Chief determines that the waiver is necessary to fulfill the objectives of the project.

(ii) In determining whether to grant a waiver under this paragraph, the Chief shall consider—

- (A) The number of producers who will benefit from the project;
- (B) The conservation benefit of the practices involved in the project;
- (C) The amount of non-federal assets leveraged to facilitate the project;
- (D) The extent to which the project involves progressive implementation of conservation practices; and
- (E) Other criteria as determined by NRCS.

(iii) Notwithstanding any waiver of the aggregate payment limitation, a water management entity or individual member thereof shall not receive, in the aggregate, directly or indirectly, payments under this paragraph, in aggregate, in excess of \$900,000 for all contracts entered into under this paragraph by the water management entity during the period of fiscal years 2019 through 2023.

**§ 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 schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and

(5) Information that enables evaluation of the effectiveness of the plan of operations 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 a CNMP by the end of the contract period, and any conservation practices in the EQIP plan of operation must be implemented consistent with a CNMP.

(e) An EQIP plan of operations on forest land must implement conservation practices consistent with an approved forest management plan.

(f) NRCS may provide a participant with assistance to implement an EQIP plan of operations which includes irrigation-related practices to address a water conservation resource concern only if the participant establishes through documented evidence, including irrigation history, that such 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 NRCS, which will effectively conserve water in accordance with § 1466.20 of this part.

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

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

(b) Payment will not be made to a participant for conservation practices 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) Unless waived for circumstances as determined by the Chief, a participant is 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.

(d) Upon the development of a new technology or management approach that provides a high potential for optimizing conservation benefits, NRCS may approve an interim conservation practice standard that incorporates the new technology or management approach 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 TSPs in its delivery of EQIP technical assistance in accordance with 7 CFR part 652.

(b) Participants may obtain technical services from certified TSPs 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) *General guidelines.* (1) Any producer who has eligible land may submit an application for participation in EQIP.

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

(3) Applications may be accepted on a continuous basis throughout the year.

(4) Producers who are members of a joint operation may file a single application for ranking purposes for the joint operation.

(b) *Ranking guidelines.* In evaluating EQIP applications, NRCS—

(1) Will establish ranking pools to address a specific resource concern by geographic area or agricultural operation type with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working groups;

(2) Will develop an evaluation process using, where applicable, science-based tools to prioritize and rank applications for funding that considers national, State, and local priority resource concerns, taking into account the factors related to conservation benefits to address identified resource concerns through implementation of conservation practices such as:

(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;

(viii) The applicant's meeting O&M requirements for the lifespan of conservation practices previously funded through EQIP; and

(xi) 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.

(3) May give priority for applications that include water conservation or irrigation-related practices, and consistent with State law in which the applicant's eligible land is located, if the application—

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

(ii) Includes 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 as designated under paragraph (c) of this section;

(4) May not assign a higher priority to the application solely because it would present the least cost to the program if determined that the conservation benefits of two or more applications for payments are comparable;

(5) Will ensure that the ranking score does 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;

(6) Will determine through the evaluation process the order in which applications will be selected for funding; and

(7) 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.

(c) *Eligibility of certain water conservation projects.* NRCS may designate as eligible watershed-wide projects that effectively conserve water, using the criteria in paragraphs (c)(1) through (3) of this section:

(1) The project area has a current, comprehensive water resource assessment; and

(2) The project plan incorporates one or more of the practices in paragraphs

(c)(2)(i) through (iii) of this section:

(i) Water conservation scheduling, water distribution efficiency, soil moisture monitoring, or an appropriate combination thereof,

(ii) Irrigation-related structural or other measures that conserve surface or ground water, including managed aquifer recovery practices, or

(iii) A transition to water-conserving crops, water-conserving crop rotations, or deficit irrigation; and

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

(d) *Administrative efficiency.* (1) NRCS may use screening factors as part of its evaluation process that may include sorting applications into high, medium, or low priority.

(2) If screening factors are used to designate a higher priority for ranking, all eligible applications screened with a higher priority are ranked and considered for funding before ranking applications that are a lower priority.

(3) NRCS is the approving authority for all EQIP contracts.

**§ 1466.21 Contract requirements.**

(a) *Requirement for a contract.* 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) *Contract terms.* An EQIP contract will—

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

(2) Have a term for no 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 O&M of the EQIP contract's conservation practices, consistent with the provisions of § 1466.25,

(iv) Develop and implement any conservation practices identified in an EQIP plan of operations consistent with a CNMP when the EQIP contract includes an animal waste management facility on an AFO,

(v) Implement conservation practices consistent with an approved forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

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

(vii) Specify the participant's responsibilities for the O&M 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) *Timeline for implementation.* At least one conservation practice must be scheduled for completion within the first 12 months of the contract; NRCS may extend this timeframe if NRCS determines that the participant is unable to complete the conservation practice for reasons beyond their control.

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

(e) *Waiver to contract limitation.* (1) The Chief may waive the contract limitation set forth in paragraph (d) of this section if the Chief determines that—

- (i) The waiver is in the best interests of the program; and
- (ii) The contract involves either—

(A) A joint operation,

(B) A group project, such as for the development of an anaerobic digester or the improvement of privately owned and operated irrigation systems that benefits multiple producers or a large area of land; or

(C) A water management entity for which NRCS has approved a payment limitation waiver.

(2) A contract for which the Chief has granted a waiver to the contract limitation set forth in paragraph (d) of this section shall be limited to no more than \$900,000.

(f) *Water conservation and irrigation efficiency projects with water management entities.* NRCS may decline to select an EQIP application from a legal entity who is otherwise eligible under § 1466.6(d) if NRCS determines that the project is better suited to be implemented under the Regional Conservation Partnership Program or 7 CFR part 622.

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

(a) The contract will incorporate the O&M agreement that addresses the O&M 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 O&M 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 the contract and request a refund of payments made for that conservation practice under the contract.

**§ 1466.23 Payment rates.**

(a) *Conservation practices.* 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 addresses;

(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) *Payment schedules.* 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) Payment to a participant for performing a practice may not exceed, as determined by NRCS, the maximum payment percentages in paragraphs (b)(1)(i) through (iii) of this section:

(i) Seventy-five percent of the estimated costs incurred by implementing the conservation practice,

(ii) One hundred percent of the estimated income foregone, 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.

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

(i) Soil health;

(ii) Water quality and quantity improvement;

(iii) Nutrient management;

(iv) Pest management;

(v) Air quality improvement;

(vi) Wildlife habitat development, including pollinator habitat;

(vii) Invasive species management; or

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

(3) Notwithstanding paragraph (b)(1) of this section, a participant that meets the definition of 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 estimated costs incurred for implementing the conservation practice.

(4) NRCS shall reduce the payments to a participant through EQIP 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 does not exceed 100 percent of the estimated costs incurred for implementing or performing the conservation practice.

(5) When NRCS enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief shall 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.

(6) 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).

(c) *High priority practices.* (1) NRCS, with input from the State Technical Committee, may designate not more than 10 practices to be eligible for increased

payments under paragraph (c)(2) of this section, on the condition that the practice, as determined by NRCS—

(i) Addresses specific causes of impairment relating to excessive nutrients in ground or surface water;

(ii) Addresses the conservation of water, to advance drought mitigation and declining aquifers;

(iii) Meets other environmental priorities and other priority resource concerns identified in habitat or other area restoration plans; or

(iv) Is geographically targeted to address a natural resource concern in a specific watershed.

(2) Notwithstanding paragraph (b) of this section, in the case of a practice designated as high priority under paragraph (c)(1) of this section a participant may receive an increased amount provided the payment does not exceed 90 percent of the incurred costs estimated for the conservation practice.

(d) *Source water protection practices.* Notwithstanding paragraph (b) of this section, in the case of a practice that is a source water protection practice as identified by the Chief, a participant may receive an increased amount provided the payment does not exceed 90 percent of the incurred costs estimated for the practice.

**§ 1466.24 EQIP payment restrictions and exceptions.**

(a) *EQIP general aggregate payment limitation.* (1) The total amount of financial assistance payments paid to a person or legal entity under this part, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of \$450,000, directly or indirectly.

(2) Except as otherwise provided in §1466.6, the limitation in paragraph (a)(1) of this section cannot be waived.

(b) *Organic production aggregate payment limitation.* Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of \$140,000.

(c) *Payment eligibility criteria.* To determine eligibility for payments, NRCS will use the criteria in paragraphs (c)(1) through (9) of this section:

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

(2) Except as otherwise set forth in this part, States, political subdivisions, and entities thereof are not considered to be producers eligible for payment;

(3) 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' tax identification numbers and percentage interest in the joint operation or legal entity, which all legal entities or persons applying, either alone or as part of a joint operation, must provide to be eligible to receive an EQIP payment;

(4) Contracts with Indian Tribes are not subject to payment or contract limitations, provided that—

(i) Indian Tribes certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation,

(ii) Certification provided at the time of enrollment covers the entire contract period, and

(iii) The Tribal entity provides, 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, with the conditions in paragraphs (c)(4)(iii)(A) through (C) of this section:

(A) Payment limitations apply to individual Tribal member(s) when applying and subsequently being granted a contract as an individual(s);

(B) American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(C) Any individual Tribal member who 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) Any cooperative association of producers that markets commodities for producers is not eligible for payment;

(6) NRCS will confirm eligibility for payments in accordance with 7 CFR part 1400, subpart F, Average Adjusted Gross Income Limitation, prior to contract approval;

(7) 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;

(8) A participant is not 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; and

(9) Before NRCS approves and issues 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.

(d) *Advance payments.* (1) Notwithstanding paragraph (c) of this section, with respect to participants who are historically underserved producers, NRCS may issue advance payments of at least 50 percent and not to exceed 100 percent of the anticipated amount of the costs incurred for the purpose of purchasing materials or services to implement a conservation practice.

(2) Eligibility for advance payment is contingent upon the requirement that the participant obtain an NRCS-approved practice design prior to approval of the advance payment.

(3) The participant must expend advanced funds for practice implementation within 90 days from receipt of funds or return the funds to NRCS within a reasonable time as determined by NRCS.

**§ 1466.25 Contract modifications and transfers of contract rights.**

(a) NRCS may modify a contract, if—

(1) The participant agrees to the modification; and

(2) NRCS determines the modified contract continues to meet the purposes of the program.

(b) NRCS may approve a transfer of the contract if—

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (e) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the EQIP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the original participant's losing control of all or a portion of the land under contract.

(c)(1) Until NRCS approves the transfer of contract rights, the transferee is not a participant in the program and may not receive payment for a conservation practice commenced prior to approval of the contract transfer.

(2) For contract payment purposes, NRCS will consider the transferor to be the participant to whom payments will be made for conservation practices implemented during the pendency of the approval of contract transfer.

(d) NRCS may terminate the entire contract if, within the time specified in the contract, a participant does not provide NRCS with written notice regarding any

voluntary or involuntary loss of control of any acreage under the EQIP contract, which includes changes in a participant's ownership structure or corporate form.

(e) Unless NRCS receives timely notice of a loss of control and approves a transfer of contract rights, a participant losing control of any acreage will constitute a violation of the EQIP contract and NRCS may terminate the contract and require a participant to refund all or a portion of any financial assistance provided.

(f) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control is voluntary, the new producer is not eligible or willing to assume responsibilities under the contract (including payment rate eligibility), or the purposes of the program cannot be met.

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

(h) In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the EQIP contract—

(1) Terminate the contract;

(2) Make any payments due under this part pursuant to guidance under applicable provisions of 7 CFR parts 707 and 1400 (including payment to successor(s)); or

(3) Take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

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

(a) NRCS may terminate a contract—

(1) Without the consent of the participant where NRCS 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)(1) NRCS may allow a participant in a contract terminated in accordance with the provisions of paragraph (a) of this section 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, when forces beyond the participant's control prevented compliance with the contract.

(2) 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.

(3) 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)(1) 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 reasonable period of time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto.

(2) If a participant continues to be in violation after such reasonable time, NRCS may terminate the EQIP contract in accordance with § 1466.26(f).

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

(1) 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 forfeits 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.

(4) Any participant whose EQIP contract is terminated under paragraph (d) of this section may be subject to debarment or suspension under 7 CFR part 1407.

(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.

### **Subpart C — Conservation Innovation**

#### **§1466.30 Definitions.**

In addition to the terms defined in § 1466.3, the definitions in this section apply to this subpart:

*Eligible entity* means, as determined by NRCS:

(1) A third-party private entity the primary business of which is related to agriculture;

(2) A nongovernmental organization with experience working with agricultural producers; or

(3) A governmental organization.

*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.

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

*On-Farm Conservation Innovation Trial (OFCIT) agreement* means an agreement that governs the relationship between NRCS and the participant for the purposes of

OFCIT implementation. An OFCIT agreement may be between either NRCS and a producer or NRCS and an eligible entity.

*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.

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

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

*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.

**§1466.31 Purpose and scope.**

(a) 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 administers CIG in accordance with this subpart. Unless otherwise provided for in this subpart, grants under CIG are subject to the provisions of 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) Applications for CIG are accepted from 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) NRCS may award grants to applicants either through a national competition or, at the Chief's discretion, separate State-level components, either of which may be offered multiple times each fiscal year.

(d) Applications for CIG should propose innovative projects or activities that—

(1) Demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production;

(2) Promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies;

(3) 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.

(e) For NRCS to consider a proposal eligible for CIG funding, the applicant must clearly demonstrate the innovative features of the proposed technology or approach.

(f) An applicant may demonstrate the innovative features of the proposed technology or approach through a variety of means, such as by establishing that it—

(1) Uses a technology or approach that was studied sufficiently to indicate a high probability for success;

(2) Demonstrates, evaluates, and verifies the effectiveness, utility, affordability, and usability of natural resource conservation technologies and approaches in the field;

(3) Adapts and transfers conservation technologies, management, practices, systems, approaches, and incentive systems to improve performance and encourage adoption; or

(4) Introduces proven conservation technologies and approaches to a geographic area or agricultural sector where that technology or approach is not currently in use.

(g) Projects or activities under CIG shall comply with all applicable Federal, Tribal, State, and local laws and regulations throughout the duration of the project.

**§1466.32 Conservation innovation grant funding.**

(a) *General guidelines.* The guidelines in paragraphs (a)(1) through (5) of this section apply for national-level CIG awards:

(1) CIG funding is available for single- or multi-year projects.

(2) The Chief will determine the funding level for CIG on an annual basis.

(3) CIG funding is made available from EQIP funds made available for EQIP.

(4) The Chief may establish funding limits for individual grants.

(5) The Chief will publicly announce funding for CIG.

(b) *Project or activity funding.* (1) 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.

(2) Applicants must provide non-federal funding at least equal to the amount of federal funds requested.

(3) Non-federal funds must be derived from cash or in-kind sources.

(c) *Limitation to funding technical assistance.* CIG provides financial assistance to grantees. Procurement of any technical assistance to agricultural producers required to

carry out a project is the responsibility of the grantee. A Federal technical representative designated by NRCS will provide technical oversight for grant projects.

(d) *Set-aside.* NRCS may set aside up to 10 percent of the total funds available for CIG for applications from historically underserved producers, or a community-based organization comprised of, representing, or exclusively working with these producers on a CIG project.

**§1466.33 Conservation innovation grant administration.**

(a) CIG applications must describe the use of innovative approaches or technologies to address announced national or State program priorities.

(b) NRCS may consider as eligible for CIG any individual or non-federal entity; however, all agricultural producers receiving a direct or indirect payment through participation in a CIG project to address announced national or State program priorities must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions of 7 CFR part 12;

(2) Be a producer as determined by NRCS; and

(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.

(c) NRCS will annually publish detailed guidance on how to apply for the grants competition(s) to address announced national or State program priorities.

**§1466.34 Award determinations.**

(a) A peer review panel evaluates completed applications based on the application evaluation criteria that address announced national or State program priorities.

(b) The peer review panel forwards compiled application evaluations to a Grant Review Board (Board).

(c) The Board reviews the peer review panel evaluations and considers review comments from State Conservationists. The Board then makes recommendations for awards to the Chief, who makes final selections.

(d) The NRCS National Headquarters makes a grant or cooperative agreement award after the Chief selects a grantee and the grantee agrees to the terms and conditions of the NRCS grant or cooperative agreement document.

**§1466.35 State-level conservation innovation grant component.**

(a) NRCS has the option of implementing a State-level CIG component. Except as otherwise indicated of this section, State-level CIG awards follows the requirements of this subpart for national-level CIG awards.

(b) Funding availability, application, and submission information for State competitions are announced through public notices separately from the national program and emphasize projects that cover limited geographic areas including individual farms, multicounty areas, or small watersheds.

(c) The State Conservationist determines the funding level for the State CIG competition and creates a review process for applications that considers various relevant criteria, including any potential conflicts of interest.

(d) NRCS may choose to adhere to the CIG national priorities or select other priority resource concerns.

**§1466.36 Intellectual property.**

(a) This section applies to all CIG awardees under this subpart.

(b) Allocation of rights to patents and inventions shall be in accordance with 2 CFR part 200.

(c) Small businesses may retain the principal worldwide patent rights to any invention developed with the support of USDA.

(d) USDA may—

(1) Receive a royalty-free license for Federal Government use,

(2) Reserve the right to require the patentee to license others in certain circumstances, and

(3) Require that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

**§1466.37 On-Farm Conservation Innovation Trials.**

(a) *Purpose.* The purpose of the On-Farm Conservation Innovation Trials (OFCIT) under this section is for NRCS to facilitate and incentivize experimentation and testing of new and innovative conservation approaches on farms in a diversity of geographic regions and on multiple scales.

(b) *Eligibility determinations.* When determining eligibility for a private or nongovernmental organization, whether or not that organization is operated for profit, to enroll in OFCIT, NRCS may consider multiple factors including—

(1) The extent to which the organization conducts business that is related to agriculture;

(2) The quantity and quality of experience the organization has working with agricultural producers; or

(3) Other factors related to the organization's likelihood to succeed or the proposed trial's likelihood to fulfill the purpose of OFCIT, as determined by the Chief.

(c) *Agreements with eligible entities.* An OFCIT agreement with an eligible entity shall contain provisions indicating how NRCS or the eligible entity shall provide technical assistance to producers.

(d) *Innovation determinations.* Notwithstanding any limitation in § 1466.31(f) of this subpart, when determining whether to approve of a proposed conservation approach as new or innovative, NRCS may consider multiple factors including—

(1) The extent to which the proposed conservation approach makes use of new or innovative conservation practices, systems, or technology;

(2) The extent to which the proposed conservation approach applies conservation practices, systems, or technology in new or innovative ways, geographic regions, or agricultural sectors; or

(3) The extent to which the proposed conservation approach uses new or innovative processes or financing for implementing conservation practices or activities.

(e) *Requirements for producers.* When considering whether to enroll the land of a producer under an OFCIT agreement, NRCS first determines that—

(1) The participating producer complies with the highly erodible land and wetland conservation provisions of 7 CFR part 12;

(2) The producer controls the land for the term of the proposed OFCIT agreement, unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(3) The producer is within the income limitations set forth in part 1400, subpart F of this chapter; and

(4) The land subject to the project proposal meets the definition of eligible land under § 1466.3.

(f) *Restriction on administrative cost.* None of the funds made available to carry out this section may be used to pay for the administrative expenses of an eligible entity.

(g) *OFCIT agreement period.* (1) An OFCIT agreement shall be for a period of at least 3 years, unless the Chief determines that a longer period is necessary.

(2) The contract period in excess of 3 years shall be no longer than reasonably and foreseeably necessary to fulfill the purpose of OFCIT, as determined by the Chief.

(3) When determining whether to set a contract period longer than 3 years, NRCS shall consider whether such a period is appropriate including whether the period supports—

(i) Adaptive management over multiple crops years; and

(ii) Adequate data collection and analysis by a producer or eligible entity to report the natural resource and agricultural production benefits of the new or innovative conservation approaches to the Secretary.

(h) *Data collection.* For all OFCIT contracts, NRCS shall ensure that appropriate data is collected and analyzed while respecting relevant privacy safeguards by

transforming the data into statistical or aggregated form so as not to include any identifiable or personal information of individual producers.

(i) *OFCIT payments.* Pursuant to an OFCIT agreement, NRCS may provide—

(1) Technical assistance to a participating producer or eligible entity with respect to the design, installation, and management of the new or innovative conservation approaches;

(2) Technical assistance to a participating eligible entity with respect to data analyses of the OFCIT; and

(3) Financial assistance to a participating producer (either directly or through an eligible entity) that may include payments to compensate for income foregone, as appropriate to address the increased economic risk potentially associated with new or innovative conservation approaches:

(j) *Absence of payment limitation.* Neither the contract payment limitation set forth in § 1466.22 nor the aggregate payment limitation set forth in § 1466.24 shall apply to OFCIT agreements.

**§ 1466.38 Soil Health Demonstration trial.**

(a) The Soil Health Demonstration (SHD) shall make use of the OFCIT process, including eligibility requirements, and funding set forth in §1466.37 to provide incentives to producers to implement conservation practices that improve soil health, increase carbon levels in the soil, or both.

(b) In carrying out SHD, NRCS shall coordinate with eligible entities to establish protocols for measuring carbon levels in the soil and testing carbon levels on land where conservation practices described in paragraph (a) of this section were applied to evaluate

gains in soil health as a result of the practices implemented by the producers in the soil health demonstration trial.

(c) For each SHD contract, NRCS shall ensure that appropriate data is collected and analyzed while respecting relevant privacy safeguards by transforming the data into statistical or aggregated form so as not to include any identifiable or personal information of individual producers.

#### **Subpart D — Incentive Contracts**

##### **§1466.40 High priority areas.**

(a) The Chief shall, in consultation with the State Technical Committee, develop a set of high priority areas for each State.

(b) The set of high priority areas described in paragraph (a) of this section must encompass every region within the State.

(c) A high priority area may encompass an entire State or overlap with other high priority areas such that a given parcel of land may exist in multiple high priority areas.

(d) The Chief, in consultation with the State Technical Committee, shall identify up to three priority resource concerns for each land use within a given high priority area.

(e) An identification under paragraph (d) of this section of a priority resource concern for one land use shall not preclude NRCS from identifying the same priority resource concern for a different land use within the same high priority area.

(f) NRCS shall identify which practices qualify as incentive practices for each land use within each high priority area based on the priority resource concern(s) identified for that land use.

(g) NRCS shall make public all determinations made under this section.

**§ 1466.41 Incentive contract selection.**

(a) NRCS will give priority to applications that address eligible priority resource concerns identified under § 1466.40.

(b) NRCS will evaluate applications relative to other applications for similar agriculture and forest operations.

(c) NRCS shall not select an application for an incentive contract that does not contain at least one qualifying incentive practice as identified under § 1466.40.

**§ 1466.42 Incentive contract requirements.**

(a) *Requirement for a contract.* (1) In order for a participant to receive incentive payments, the participant must enter into an incentive contract agreeing to implement one or more incentive practices.

(2) Payment for technical services may be included in the contract pursuant to requirements of this part.

(b) *Incentive contract terms.* An incentive contract will—

(1) Identify all incentive practices to be implemented, the timing of practice installation, responsibilities of the participant, the O&M requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a period as set forth in § 1466.43;

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

(c) *Termination of the incentive contract.* NRCS may terminate an incentive contract consistent with the provisions of § 1466.26.

**§ 1466.43 Incentive contract period.**

(a) NRCS shall apply science-based criteria to determine an appropriate contract period to achieve desired conservation benefits.

(b) The period determined as appropriate under paragraph (a) of this section shall not be less than 5 years nor exceed 10 years.

**§ 1466.44 Incentive payment rates and restrictions.**

(a) *Aggregate payment limitation.* (1) Notwithstanding the payment limitation in §1466.24, the total amount of payments paid to a person or legal entity under this subpart, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of \$200,000, directly or indirectly.

(2) Payments received for technical assistance will be excluded from the limitation in paragraph (a)(1) of this section.

(3) The limitation in paragraph (a)(1) of this section cannot be waived.

(b) *Restrictions and exceptions.* Except as otherwise indicated in paragraph (a) of this section, incentive contracts are subject to the payment restrictions and exceptions as set forth in § 1466.24.

(c) *Implementation payments.* The payment rates for implementation of incentive practices shall be identical to the payment rates for practice implementation as set forth in § 1466.23.

(d) *Annual payments.* In addition to the payment for implementation set forth in paragraph (c) of this section, NRCS may award annual payments through incentive contracts to compensate the participant for up to 100 percent of the costs of—

(1) O&M of the incentive practice; and

(2) Income foregone by the participant, including payments to address, as appropriate—

(i) Increased economic risk,

(ii) Loss in revenue due to anticipated reductions in yield, and

(iii) Economic losses during transition to a resource-conserving cropping system, resource-conserving crop rotation, or resource-conserving land uses.

### **Subpart E — General Administration**

#### **§ 1466.50 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, the designation of identified priority resource concerns, and eligible conservation practices are not subject to appeal.

#### **§ 1466.51 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.

#### **§ 1466.52 Access to operating unit.**

An authorized NRCS representative will have the right to enter land under an NRCS conservation program contract 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.

**§ 1466.53 Equitable relief.**

(a) If a participant relied upon the advice or action of an 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 an 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 an NRCS representative resulted in ineligibility or a program violation, but the participant believes that a good-faith effort to comply was made, the participant may request equitable relief under 7 CFR 635.3.

(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 7 CFR 635.4.

(c) NRCS reserves the right to correct all errors in entering data or the results of computations in an EQIP contract. If a participant does not agree to such corrections, NRCS shall terminate the contract.

**§ 1466.54 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 this 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 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.

**§ 1466.55 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.

**§ 1466.56 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 meets 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.

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