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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 (USDA).

ACTION: Final rule.

SUMMARY: This final rule adopts, with minor changes, an interim rule published in the *Federal Register* on December 17, 2019, that made changes to the NRCS's Environmental Quality Incentives Program (EQIP). The changes were made to be consistent with the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) and implemented administrative improvements and clarifications. NRCS received input from 197 commenters who provided 598 comments in response to the interim rule. This final rule makes permanent those changes appearing in the interim rule, responds to comments, and makes further adjustments in response to some of the comments received.

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

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SUPPLEMENTARY INFORMATION:

Background

On December 17, 2019, NRCS published an interim rule with request for comments in the *Federal Register* (84 FR 69272-69293) to implement mandatory changes made by the 2018 Farm Bill and administrative improvements and clarifications. This final rule adopts, with minor changes, the amendments made by the interim rule. These changes are in response to public comment as explained in the summary of EQIP comments below.

Discussion of EQIP (7 CFR part 1466)

Through EQIP, NRCS incentivizes agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy, and related natural resources on their land. EQIP promotes agricultural production, forest management, and environmental quality as compatible goals, and optimizes environmental benefits by assisting producers in addressing resource concerns on their operations. EQIP also helps agricultural producers meet Federal, State, and local environmental requirements and avoid the need for new requirements.

Eligible lands include cropland, grassland, rangeland, pasture, wetlands, nonindustrial private forest land, and other land on which agricultural or forest-related products or livestock are produced and natural resource concerns may be addressed.

Participation in EQIP is voluntary.

The Secretary of Agriculture delegated authority to the Chief, NRCS, to administer EQIP on behalf of CCC.

The interim rule:

- Incorporated the addition of new or expected resource concerns to EQIP program purposes, adapting to and mitigating against increasing weather volatility, and drought resiliency measures.
- Amended how EQIP interacts with the Regional Conservation Partnership Program (RCPP) since RCPP is now a stand-alone program.
- Amended some definitions and added others to address changes made by the 2018 Farm Bill, including—
 - Animal feeding operation (AFO);
 - Eligible land;
 - Estimated income foregone;
 - Forest management plan;
 - High priority area;
 - Incentive practice;
 - Priority resource concern;
 - Semipublic;
 - Soil remediation;
 - Soil testing; and
 - Water management entity (WME).
- Added “increased weather volatility” as a resource concern under the national priorities identified in the regulation.

- Added to outreach responsibilities the requirement to notify historically underserved producers about the availability to elect to receive advance payments.
- Addressed EQIP contract provisions associated with WMEs and certain water conservation projects.
- Removed the requirement that a participant must implement and develop a comprehensive nutrient management plan (CNMP) by the end of the contract and replaced it with the following: any conservation practices in the EQIP plan of operation must be implemented consistent with a CNMP.
- Incorporated the ability to waive the \$450,000 regulatory contract limitation and establish a \$900,000 regulatory contract limitation for certain projects with joint operations, group projects, or contracts where NRCS has waived the payment limitation for a WME.
- Increased payment rates for certain high-priority practices and increased payment rates for practices that address source water protection.
- Updated the statutory payment limitations for general EQIP contracts and contracts entered into under the National Organic Initiative.
- Clarified provisions related to contract administration, including procedures for contract modification and termination.
- Relocated provisions related to administration of Conservation Innovation Grants (CIGs) to its own subpart and incorporated the addition of On-farm Conservation Innovation Trials (On-farm Trial), which include the Soil Health Demonstration (SHD) Trial.

- Added a new subpart to address EQIP incentive contracts, which are a new enrollment option created by section 2304 of the 2018 Farm Bill.
- Relocated the General Administration provisions from subpart C to a new subpart E and updated language addressing environmental markets to reflect changes made by the 2018 Farm Bill.

Summary of EQIP Comments

The interim rule had a 60-day comment period ending February 18, 2020. NRCS received 598 comments from 197 commenters in response to the rule. In addition, one organization submitted a spreadsheet with 12,852 comments. NRCS reviewed these comments and categorized and summarized them according to the topics identified below. The topics that generated the greatest response include conservation practices, contract limits, and national priorities.

In this rule, the comments have been organized in alphabetic order by topic. The topics include:

- Administration;
- Advance payments;
- Applicability;
- CIG—On-farm Trials, Other, and SHD Trials;
- Conservation Practices—High Priority Practices, Incentive Practices, Other, Prairie Pothole Wildlife Practice, Soil Health, and Source Water Protection;
- Contract Administration;
- Contract Limits Unrelated to WMEs;

- Contract Requirements;
- Contracts with WMEs—Adjusted Gross Income (AGI) and Payment Limitation Waiver, Land Eligibility Criteria, and Other;
- Definitions—Eligible Land, High Priority Area, Priority Resource Concern, Soil Testing, and WMEs;
- Eligibility;
- Environmental Assessment;
- EQIP Plan of Operations—Comprehensive Nutrient Management Plan;
- Fund Allocations;
- General;
- Incentive Contracts—Selection Criteria;
- National Priorities;
- Outreach Activities;
- Payment Limits;
- Payment Rates; and
- Ranking.

Of the 598 comments raised by the 197 commenters, 47 were general in nature and most expressed support for EQIP or how EQIP has benefitted particular operations. NRCS also received 21 comments that were not relevant to the EQIP interim rule. Seven comments criticized the regulation for not strengthening EQIP’s impact on climate resilience or soil health. Six comments requested NRCS technical assistance for existing and potential projects. Several of these comments conveyed frustration with the process or specific working relationships. NRCS is committed to providing the highest quality

service to its customers and partners, and these comments have been forwarded to the appropriate staff.

In general, comments focusing on topics that were outside the scope of the regulation will not be addressed. In response to the request that public comment be submitted through e-mail, NRCS reminds the public that all comments should be submitted to the agency dockets on Regulations.gov and any comments that are received by another method will be posted on regulations.gov for public access to all of the comments in one place. In following the rulemaking process, NRCS seeks to provide equal consideration to all who wish to provide feedback. Submission of public comment through Regulations.gov provides a more equitable and reliable system by which to collect comments within the stated timeframes.

NRCS also received 24 comments that expressed nonspecific dissatisfaction with EQIP or the interim rule and 47 comments that supported EQIP or the interim rule. These comments do not include any recommendations for change. This final rule responds to the comments received by the public comment deadline and makes minor clarifying and related changes.

Administration

Comment: NRCS received comment related to EQIP administration, including comment addressing outreach, organic production, input from State advisory committees, funding targets, expanding the Working Lands for Wildlife model, additional training to employees, and allowing grazing on all land uses.

Response: NRCS appreciates the suggestions for improving outreach and operations and will incorporate suggestions when updating outreach plans and EQIP policies. No change is being made to the regulation in response to this issue.

Advance Payments

Comment: NRCS received comment recommending making advance payments mandatory or changing their timing, including making the advance payment when the producer is ready to begin the practice or to begin the 90-day clock upon practice installation.

Response: NRCS built criteria into business tools that must be met prior to approving an advance payment, including verification that the request is for an immediate need and that a final design has been accepted by the participant. NRCS cannot change the start time for the 90-day clock since statute specifies that the clock starts on the date that the advance payment is received by the participant. The participant's receipt of the advance payment, and NRCS's expenditure of funds, commences the 90-day clock. NRCS offers advance payments to all historically underserved producers and records, by contract item, the producer decision to receive advance payments on the EQIP schedule of operations. No change is being made to the regulation in response to this issue.

Applicability

Comment: NRCS received comment recommending changes to EQIP's purpose, scope, and objectives as discussed in the Applicability section, § 1466.1, including identifying that EQIP participation should also avoid the need for regulatory programs, identifying that the EQIP purpose includes financial and technical assistance to organic producers, adding that new or expected resource concerns relate also to organic

producers, and suggesting that assisting producers with transitioning from an expiring Conservation Reserve Program (CRP) contract should be an EQIP priority in order to keep land in grass and maintain financial and resource investments.

Response: The final rule focuses on the purposes spelled out in statute, including referencing assistance related to organic production and helping producers transition from CRP and, in doing so, keeping land in grass and thereby maintaining financial and resource investments. The regulatory text has been modified at § 1466.1(a) and § 1466.20(b) to address these concerns. No other changes are being made to the regulation in response to this issue.

CIGs

CIG On-farm Trials

Comment: NRCS received comment supporting CIG On-farm Trials testing of new technologies at the field level, including recommending that NRCS clearly state that on-farm conservation research is authorized under CIG, and that soil health testing be required of all On-farm Trials to determine impacts to soil health.

Response: On-farm Trials “facilitate and incentivize experimentation and testing of new and innovative conservation approaches.” If research falls within the scope of “experimentation and testing,” it is an authorized activity for On-farm Trials. Soil health testing is not a required part of every On-farm Trials project, although NRCS may apply the extent to which an On-farm Trial seeks to measure or improve soil health as a ranking consideration in the context of funding opportunities. No change is being made to the regulation in response to this issue.

Other

Comment: NRCS received comment recommending changes to other aspects of CIG, requesting NRCS waive its one-to-one match requirement for grants that assist historically underserved producers, reword the 10 percent funding for grants that assist historically underserved producers to require that no less than 10 percent of CIG funding be awarded to historically underserved producers, expand the purpose of CIG to specifically mention on-farm practical field research as a purpose, and directing a CIG study for new and innovative manure management.

Response: This final rule allows a reduction of match requirements for historically underserved producers on a case-by-case basis and sets forth the criteria for granting such a match reduction. NRCS has consistently met the 10 percent funding goal for historically underserved producers and is committed to improving outreach to this demographic. No changes are made regarding the funding goal in the final rule. This rule is expanding the purposes language in the regulation to include practical field research and is continuing to work with producers and partners to develop innovative practices for manure management through multiple avenues, including CIG.

SHD Trials

Comment: NRCS received comment recommending that NRCS add language to the rule to diversify participation in SHD Trials—for example, by farm type, size, location, and underrepresented producers. Comment also recommended funding for soil testing.

Response: The final rule provides for a process that results in diverse CIG participation. NRCS is developing a soil test activity which could be utilized in CIG

contracts with producers. If an SHD Trial results in a reliable, efficient, and cost-effective process for soil health testing, NRCS will consider it in developing the soil test activity noted above. No additional language was added to the regulation in response to this issue.

Conservation Practices

High-Priority Practices

Comment: NRCS received comment recommending specific targets and specific habitat and area restoration plans (such as prioritizing practices with a high environmental benefit but low adoption rate or offering longer contracts with additional payments for foregone income for practices that benefit wildlife).

Response: The EQIP regulation gives States the greatest flexibility to adapt to local needs and determine high-priority practices in consultation with State technical committees and local working groups. States currently have the authority to prioritize practices that have a high environmental benefit but low adoption rate to increase practice adoption. In addition, EQIP provides the opportunity for producers to enter into contracts of up to 10 years, and NRCS currently allows States to assign higher significance to wildlife habitat development and other natural resource concerns when determining rates for estimated foregone income. No change is being made to the regulation in response to this issue.

Incentive Practices

Comment: NRCS received comment recommending prioritizing EQIP incentive practices that are compatible with ecosystem services markets; prioritizing applications with at least two priority resource concerns; allowing EQIP grazing practices on cover

crops and other grass-based practices that have wildlife benefits; prioritizing payments for management practices to encourage long-term, beneficial changes to production systems; and using longer-term incentive contracts in certain circumstances, such as with wildlife projects.

Response: Incentive practices are a relatively new area for NRCS, and NRCS is continuing to work with State, local, and Tribal groups to develop practices that are best suited for incentive payments in each high-priority area. As NRCS develops those practices, it is considering compatibility with ecosystem services markets, multiplicity of benefits, wildlife benefits, long-term benefits, and term length where appropriate and within the bounds of statute. No change is being made to the regulation in response to this issue.

Other

Comment: NRCS received comment recommending incorporating new technologies and advancements in conservation practice standards, creating interim standards where beneficial, and encouraging flexibility to better address State and local needs.

Response: NRCS will continue to adapt and innovate the application of science and technology to provide the best resource conservation possible through each of its programs, including EQIP. These adaptations and innovations will be reflected in future NRCS practice standards. No change is being made to the regulation in response to this issue.

Prairie Pothole Wildlife Practice

Comment: NRCS received comment recommending prioritizing longer wildlife habitat contracts to benefit such areas as the Prairie Pothole Region and rice-producing areas. The EQIP statute (section 1240B(g)(3)), provides for longer-term (up to 10 year) contracts that benefit wildlife and includes postharvest flooding practices or practices that maintain the hydrology of temporary and seasonal wetlands.

Response: NRCS recognizes the importance of wildlife protection in the Prairie Pothole Region and rice-producing areas. State and regional priorities determine how best to implement strategies for ensuring the most appropriate contract terms are in place to protect wildlife. No change is being made to the regulation in response to this issue.

Soil Health

Comment: NRCS received comment requesting that NRCS provide more soil health practice options, including suites or bundles of soil health practices through outreach efforts and asked that NRCS consider additional ranking points for applicants using suites or bundles of soil health practices. Comment also asked that NRCS develop soil health planning protocols for cropland, grazing land, and other agricultural lands; that these protocols be widely available through EQIP technical and financial assistance; and that soil health testing be required for any contract supporting the adoption of soil health practices and that grazing of cover crops be permitted to enhance soil health conditions.

Response: Improving and maintaining soil function is a priority for, and a foundation of, NRCS's programs and maintaining or developing relevant measures to promote soil health is a focus of the agency.

Regarding the overall process of additional soil health conservation practice options, NRCS follows a formal process to review each national conservation practice standard at least once every 5 years from its date of issuance or review. Interim conservation practice standards serve as mechanisms for field testing new technology. Interim conservation practices that prove successful are either developed into national conservation practice standards or incorporated into existing practice standards, as appropriate. States may modify national practice standards to meet State or local needs.

The National Technical Guide Committee publishes a notice in the *Federal Register* requesting comments on all additions or revisions to conservation practices in the NRCS National Handbook of Conservation Practice Standards. The comment period is not less than 30 days from the date of notice publication.

The NRCS Conservation Practice Standard Cover Crop (Code 340) provides guidance for grazing cover crops. Grazing of cover crops may be permitted depending on such factors as the soil condition and growth state of the cover crop. When addressing conditions such as soil health and organic matter content, cover crop species will be selected on the basis of producing higher volumes of organic material and root mass to maintain or increase soil. Grazing must not cause negative impact to the site (for example, erosion or compaction).

No change is being made to the regulation in response to these issues.

Source Water Protection

Comment: NRCS received comment suggesting that wetland practices, such as wetland restoration and buffers, count as source water protection practices. Comment

noted the importance of involving State technical committees in designating source water protection areas and eligible source water protection practices.

Response: NRCS will continue to work closely with State technical committees, which are crucial in designating source water protection areas and eligible source water protection practices. As determined by NRCS in collaboration with the State technical committees, wetland restoration and buffers will be source water protection practices. No change is being made to the regulation in response to this issue.

Contract Administration

Comment: NRCS received comment encouraging that NRCS use the longest possible contract lengths (up to 10 years) for wildlife conservation, especially for wildlife practices that require high levels of site preparation and maintenance. Comment also highlighted that EQIP requires applicants to obtain the written concurrence of the landowner to apply a conservation practice, while Colorado state law allows ditch owners to install water pipelines to replace open-air ditches without the landowner's consent.

Response: States already may offer contracts with a term of up to 10 years with one or more annual management practices to restore, develop, protect, and improve wildlife habitat. Regarding the difference between State law and Federal regulation, the EQIP requirement to obtain landowner permission to apply a conservation practice cannot be waived. However, if the holder of the right of way has the property rights necessary to install water pipelines without consent of the fee title landowner, then NRCS considers the holder of the right of way the landowner for consent purposes. No change is being made to the regulation in response to this issue.

Contract Limits Unrelated to Water Management Entities

Comment: NRCS received comment recommending removing joint operations and confined animal feed operations (CAFOs) from the list of operations for which a waiver can be requested to exceed the \$450,000 contract limit. The specific change requested was to amend the rule by striking § 1466.21(e)(1)(ii)(A) and the words or individual member thereof from § 1466.6(d)(3)(iii).

While the higher contract limit does not relate specifically to CAFOs, the comment associated CAFOs with joint operations and the availability of higher levels of program assistance. Comment also recommended that EQIP not fund CAFOs at all.

Response: By statute, EQIP has an aggregate \$450,000 payment limitation per person or legal entity, directly or indirectly, for all contracts entered into during fiscal years (FYs) 2019 through 2023. The overall program payment limitation may not be waived; further, NRCS does not have the discretion to automatically disqualify CAFOs from EQIP assistance. Under payment limitation requirements that apply to NRCS and Farm Service Agency programs, joint operations are able to receive a payment up to the maximum amount specified for a person or legal entity multiplied by the number of persons or legal entities that comprise ownership of that joint operation (see 7 CFR part 1400). When a joint operation consisting of two or more members enters into an EQIP contract, the EQIP contract with the joint operation may receive funding of up to \$900,000. Without a contract limit, joint operations could receive very large payments under an EQIP contract.

To address concerns related to large contracts with joint operations, NRCS in 2009 imposed a regulatory contract limit that corresponded with the EQIP payment limit.

The 2009 interim rule did not adjust the contract limit for joint operations, and this system was maintained in the EQIP regulation through the 2014 Farm Bill. The \$450,000 limit does not, therefore, represent a change to EQIP brought about in the 2019 interim rule.

To clarify, the overall program payment limitation may not be waived. No member of a joint operation may receive more than \$450,000 in payment through EQIP for program years 2019 through 2023. But, when a joint operation consisting of two or more members enters into an EQIP contract, the EQIP contract with the joint operation may receive funding of up to \$900,000. EQIP is using this flexibility to help streamline contract administration for these types of arrangements. Unlike the Conservation Stewardship Program (CSP), EQIP does not require enrollment of the entire operation. Each operation may receive multiple contracts for EQIP; therefore, the purpose of contract limits in EQIP differs from that in CSP.

No change is being made to the regulation in response to these issues.

Contract Requirements

Comment: NRCS received comment recommending provisions for NRCS to incorporate into the EQIP contracts with producers, including requiring participants to report EQIP environmental outcomes to NRCS; ensuring that the eligibility of irrigation districts for EQIP contracts does not alter the annual funding allocation to States; strengthening support for best grazing management practices; limiting contracts to only 1 year; and requiring consideration as to how irrigation projects and practices could inadvertently negatively impact wildlife habitats and wetlands and increase water

consumption by bringing additional land into production or converting land to more water-intensive crops.

Response: NRCS provides an assessment of resource concerns, including impacts to wildlife and water conservation, before a practice or activity is implemented, and determines any potential effects and expected environmental outcomes through the ranking process prior to approving EQIP contracts. In accordance with statutory limitations, NRCS does not provide supplemental allocations to States for WME projects. Contract terms are up to 10 years with the actual term determined by the producer and agreed to by NRCS. No change is being made to the regulation in response to this issue.

Contracts with Water Management Entities

Adjusted Gross Income and Payment Limitation Waiver

Comment: NRCS received comment related to AGI and payment limitation waiver criteria with respect to contracts with WMEs, including: general support for the \$900,000 payment limit; support for increasing the payment limitation amount to over \$900,000 as long as it adheres to specific, narrow cases allowed by statute; and support for increasing the payment limit to at least 10 times the individual limit (over \$4.5 million) to address large-scale irrigation infrastructure projects. Other comment suggested waiver criteria, such as if the contract addressed multiple natural resource concerns outlined in statute, service to multiple farm operations, or benefitted historically underserved producers. Some comment expressed a desire that individual producers maintain access to funds within State EQIP allocations, either by maintaining the \$900,000 payment limit, reducing it to the standard \$450,000, by establishing a separate

national allocation pool for WME projects or continuing to fund WMEs through RCPP. Other comment recommended separating the AGI waiver and payment limitation waiver.

Response: NRCS appreciates the diverse array of views. When a WME establishes through its program application that it deserves an AGI waiver using the criteria established in the interim rule (and retained in this final rule), it also establishes that it needs an increased contract limit. The contract limit of \$900,000 is an appropriate size to draw a distinction between EQIP and other programs that may protect watersheds, such as RCPP or Watershed Operation Assistance under public law 83-566. No change is being made to the regulation in response to this issue.

Land Eligibility Criteria

Comment: NRCS received comment expressing general support for contracts with WMEs; recommending expanding the definition of adjacent land to include lands that create a direct connection between the infrastructure under the control of a WME and the producer's land (i.e., any land over which the WME holds an easement); limiting the scope of adjacent land to land that abuts an EQIP-eligible farm or ranch and is necessary for the practice or system being implemented by the WME; limiting recipients of EQIP funds to existing agricultural producers; and, ensuring that EQIP contracts do not enable water spreading, increase consumptive use, or put new land into agricultural production.

Response: The term "adjacent" is not defined in the interim rule or in this final rule. However, the adjacent land must meet several criteria in order to be eligible for enrollment in a contract with a WME, including that it must be "necessary to support the installation of a conservation practice or system on eligible land." This supports an expansive interpretation of "adjacent" while ensuring that the adjacent land's enrollment

supports the installation of a practice or system on eligible land. No change is being made to the regulation in response to this issue.

Other

Comment: NRCS received comment supporting the expansion of EQIP eligibility to WMEs, including land grant—mercedes, and recommended streamlined processes, clarification on eligibility, and guidance for WMEs on application.

Response: Streamlining and clarification will be addressed through additional outreach and communication to stakeholders. No change is being made to the regulation in response to this issue. The regulation in § 1466.6, “Program requirements,” includes additional criteria for WME eligibility, consistent with statutory direction, to ensure water conservation projects typical of land grant—mercedes can be considered for assistance.

Definitions

Eligible Land

Comment: NRCS received comment recommending including reference to wildlife under the definition for eligible land to incentivize stewardship of land managed for wildlife and expanding the definition of associated agricultural lands to include neighboring properties as eligible lands to both support agriculture and wildlife habitat.

Response: NRCS appreciates the interest in EQIP from wildlife and conservation stakeholders. The purpose of EQIP is to provide financial and technical assistance to agricultural producers on eligible agricultural and nonindustrial private forest land. No change is being made to the regulation in response to this issue.

High-Priority Area

Comment: NRCS received comment on the definition of high-priority areas, including recommending how to conduct a robust consultation process with the State technical committees and other stakeholders, selecting areas that cover broad and diverse areas of agricultural production and resource concerns, and also selecting areas based on a narrower, prioritized implementation approach.

Response: NRCS will continue to work cooperatively with State technical committees through the local working group process to select high-priority areas consistent with national, State, and local priorities. No change is being made to the regulation in response to this issue.

Priority Resource Concern

Comment: NRCS received comment supporting the local role of the State in setting priority resource concerns, including wildlife practices and high-priority practices.

Response: NRCS will continue to work cooperatively with State technical committees to select priority resource concerns consistent with national, State, and local priorities. No change is being made to the regulation in response to this issue.

Soil Testing

Comment: NRCS received comment that supported identifying appropriate soil health testing protocols, requiring the protocols in all EQIP contracts related to soil health, and quantifying the environmental outcomes of EQIP contracts on soil health.

Response: NRCS appreciates the attention that the public has given to soil health. NRCS continues to develop activities designed around soil health and soil testing, which

are likely to receive recognition in local, State, or national priorities for ranking or other purposes. No change is being made to the regulation in response to this issue.

Water Management Entities

Comment: NRCS received comment recommending that the definition of “water management entity” include mutual ditch, irrigation, and canal companies as “similar entities” due to their similarities to acequias in their purpose, size, legal status, and organizational structure. Comment also supported limiting EQIP funding for WMEs to contracts where the water users are farmers and ranchers.

Response: NRCS will keep the current definition of WME in § 1466.3, since this definition does not exclude ditch and related companies. Ditch and related companies may be eligible WMEs if they are a semipublic organization with the purpose of assisting private agricultural producers manage water distribution or conservation systems. No change is being made to the regulation in response to this issue.

Eligibility

Comment: NRCS received comment recommending EQIP eligibility language reflect grazing rights on public lands better, make entities that do not have direct control of the land and members of Internal Revenue Code (IRC) Section 501(d) religious organizations eligible for participation, and expand eligibility for On-farm Trials to organizations that conduct business related to conservation on agricultural lands.

Response: Control of land is a necessary requirement for participant eligibility. The participant must be able to implement the requirements of the EQIP contract, which is demonstrated through control of the land.

Regarding publicly-owned land, NRCS considers whether the land is within the applicant's control (in other words, that the applicant can implement the terms of the EQIP contract), whether the land is a working component of the producer's agricultural or forestry operation (for example, that the producer uses the land for grazing), and whether conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern. If all three criteria are met, the land may be eligible.

Religious organizations are not excluded from eligibility. A legal entity organized under IRC Section 501(d) meets the definition of legal entity in § 1466.3 provided it owns land or an agricultural commodity, product, or livestock or produces an agricultural commodity, product, or livestock.

An eligible entity for the purposes of On-farm Trials includes a third-party private entity, the primary business of which is related to agriculture. This includes organizations that conduct business related to conservation on agricultural lands.

No change is being made to the regulation in response to this issue.

Environmental Assessment

Comment: NRCS received comment related to the Programmatic Environmental Assessment (EA). Comment asserted: the current "no action" alternative is not a legally permissible outcome; the Programmatic EA must indicate which decisions are discretionary or mandatory; for discretionary decisions, NRCS must list at least two legally permissible alternatives; and because the Programmatic EA is insufficient, the Finding of No Significant Impact (FONSI) is also insufficient.

Comment also indicated that data collection is a key input to assessing environmental impact, suggesting that NRCS incentivize producer participation in third-party data collection services to track environmental benefits of conservation practices.

Response: NRCS prepares its programmatic National Environmental Policy Act (NEPA) documents to provide broad-scale analyses to which site-specific program actions may tier, when appropriate, for purposes of complying with NEPA. NEPA does not require Federal agencies to consider alternatives that have substantially similar consequences; rather, it is clearly intended to help agencies avoid significant adverse impacts. The “no action” alternative describes continuation of EQIP under its previous regulations. NEPA regulations require analysis of a no action alternative for comparative reasons. Conservation activities associated with each EQIP contract undergo additional site-specific environmental review and analysis designed to avoid, minimize, rectify, reduce, eliminate, or compensate for any potential adverse impacts. No change is being made to the regulation in response to this issue.

EQIP Plan of Operations—Comprehensive Nutrient Management Plan

Comment: NRCS received comment about progressive implementation of a CNMP, asserting that the interim rule only requires development of a CNMP and does not require progressive implementation and thus is contrary to the intent of Congress.

Response: NRCS understands these comments to suggest that the interim rule is ambiguous regarding CNMP implementation. This rule revises the regulation to add clarity. From a practical standpoint, a producer implementing EQIP-funded conservation practices consistent with CNMP is progressively implementing CNMP. However, some EQIP contracts are for development of CNMP as a conservation activity plan only.

There are no practices to implement progressively under these contracts other than the plan itself. In addition, this rule clarifies that CNMP will address all “applicable” natural resources since natural resource issues are site-specific. In this manner, NRCS hopes to avoid any confusion about the scope of CNMP while maintaining core aspects that have been in the CNMP definition since 2003.

Fund Allocations

Comment: NRCS received comment recommending that NRCS address the funding allocation for wildlife conservation practices, including that NRCS: ensure the 10 percent allocation is a “floor” and not a “ceiling” for wildlife practice funding; set the 10 percent allocations at the State rather than national level; make a narrower list of practices that count toward the 10 percent allocation or including State partners in determining which practices should count in that State; and exclude EQIP contracts from the 10 percent allocation that involve either the Working Lands for Wildlife model or interagency cooperation with the U.S. Fish and Wildlife Service. Comment also expressed a desire for increased collaboration with State and local partners for targeting wildlife habitat and conservation.

Other comment addressed the funding allocation for livestock practices, including disapproval of the statutory change from 60 percent to 50 percent, opinion that the 50 percent mandate was far too high, and request about how the national mandate is implemented on a State-by-State basis.

Comment also addressed other fund allocation topics as follows:

- Concern over whether NRCS was making equitable allocations to States by citing a 2017 U.S. Government Accountability Office report suggesting

that NRCS was using historical allocation data rather than seeking to optimize environmental benefits.

- Recommendation to create a national initiative for targeted funding for small-scale operations based on existing State-level initiatives.
- Concern that allocations of funds to WMEs would take conservation dollars away from producers, so they requested that NRCS add language ensuring that producers would be the ultimate beneficiaries of EQIP funding for contracts with WMEs.
- Note that Congress did not want contracts with irrigation districts to adjust State funding allocations.
- Suggestion that contracts with WMEs should increase allocations for western States.
- Request that NRCS link funding allocations to accountability mechanisms so that activities with limited conservation benefits are not funded.

Response: NRCS will consider these comments in its allocation process. The breadth and depth of these comments indicate the importance of fund allocations to EQIP stakeholders and partners. EQIP implementation, including the allocation of funding, is complex in nature because the statute provides for multiple goals and requirements. All statutory goals must be addressed even though some desired outcomes are difficult or impossible to quantify given current information availability. Through local input, combined with the use of the Conservation Effect Assessment Project (CEAP) and other important data, USDA seeks to enable program managers and leaders to achieve the most effective and efficient program outcomes across the entire range of statutory goals.

State technical committees and local work groups, with the knowledge and

expertise of their members, also provide additional sources of data and information. Their membership includes leaders in agriculture, conservation, producers, and other stakeholders and their input provides a means of ensuring EQIP allocations are made according to the resource concern, targeted to the local conditions, and relevant to and contributing to national resource priorities. These State and local sources provide valuable information and data on environmental concerns not otherwise available, thus giving allocation decisions far more depth and granularity. The State technical committee regulation and standard operating procedures address this process and thus no change is being made to the EQIP regulation in response to this issue.

General

Comment: NRCS received comment requesting a modification to how the changes made by the 2018 Farm Bill appear in the interim rule preamble.

Response: The interim rule preamble provides a summary and is not intended to represent a comprehensive description of the 2018 Farm Bill changes. NRCS encourages reviewers to read the 2018 Farm Bill if additional perspective is sought. No change is being made to the regulation in response to this issue.

Incentive Contracts—Selection Criteria

Comment: NRCS received comment recommending NRCS modify the incentive contract selection criteria, giving priority to applications aiming to make the participant eligible for CSP at the end of the contract period.

Response: Incentive contracts are designed to serve as a bridge between EQIP and CSP. State technical committees and other local stakeholders designate priority resource concerns and high-priority areas and assist in determining priority resource concerns for CSP. The final rule maintains language in the interim rule to maximize

local control over what EQIP practices are best suited for the applicant to transition to CSP. No change is being made to the regulation in response to this issue.

National Priorities

Comment: NRCS received comment recommending the addition of soil health, climate resilience, and drought resiliency to the list of national priorities in § 1466.4(a), indicating that Congress made soil testing and soil health planning qualified activities for EQIP support in the 2018 Farm Bill, and that Congress spoke to the need to focus on climate resilience by making addressing weather variability and drought resilience new purposes for EQIP.

Response: Rather than increasing the number of national priorities from 8 to 10, this rule adds concepts of soil health and climate resiliency to existing national priorities. In particular NRCS incorporates concepts of climate resiliency through the addition of the language “increased resilience against drought and weather volatility” in § 1466.4(a)(4) and incorporates “improvement of soil health” in § 1466.4(a)(6).

Outreach Activities

Comment: NRCS received comment recommending a variety of different actions with respect to its outreach activities, including: requesting a focus on the conservation benefits of wildlife practices; targeting diverse farming operations; additional outreach at the local level; adding information on advance payment options in outreach to historically underserved producers to increase EQIP participation; and using USDA and other data to inform producers of the potential economic impact of adopting conservation practices. Comment recommended that NRCS track and provide annual information to the public

on the results of the allocations for wildlife practices and the use of native plants. Other comment offered general support for NRCS activities.

Response: NRCS is committed to providing high-quality service across the Nation. Outreach strategies and efforts are in place at the national, State, and local levels, with those at the State and local level tailored to the needs of the specific area. In addition, targeted outreach efforts are underway for historically underserved producers and Tribes. In the regulation, § 1466.5 contains special outreach authorization for historically underserved producers and a paragraph including outreach and documentation to historically underserved producers pertaining to advance payments. Regarding economic impacts, NRCS considers estimated economic impact in its conservation planning process, including in the development of conservation practice standards. The 2018 Farm Bill also requires the Secretary to identify available data sets within USDA that link the use of conservation practices to farm and ranch profitability (including crop yields, soil health, and other risk-related factors).

NRCS tracks EQIP investment and performance. In addition to the 2018 Farm Bill's emphasis on reporting EQIP outcomes, the agency has an interest in understanding the impact of the statutory increase of the wildlife allocation from 5 to 10 percent. Regarding publicly available reports, the Soil and Water Resources Conservation Act (RCA) provides broad natural resource strategic assessment and planning authority for USDA. Information about NRCS's conservation programs at the State, regional, and national level, is available on the RCA interactive data viewer (<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/rca/ida/>).

No changes have been made to the regulation in response to these comments.

Payment Limits

Comment: NRCS received comment related to payment limits, including opposition to the increased payment limit for participants in the organic initiative, request for removal of the \$200,000 payment limit for incentive contracts, and support for keeping the aggregate payment limit of \$450,000.

Response: NRCS provides financial and technical assistance, through the National Organic Initiative, to help organic or transitioning-to-organic producers. In the interim rule, in § 1466.24, NRCS updated the payment limitations for organic production from annual limits to an aggregate limit from FY 2019 through 2023, as required by the 2018 Farm Bill. Economic analysis indicates little impact as organic initiative contracts are usually well below the multiyear payment limit of \$80,000 previously set by the 2014 Farm Bill. In the past, organic participants who exceed the organic initiative payment limit use other EQIP funding mechanisms. With the increased limit, more organic applicants will be able to make use of the organic initiative and consequently need only compete with other organic operations for funding.

The 2018 Farm Bill's introduction of EQIP incentive contracts provides a new option for participation. In § 1466.44 of the interim rule NRCS established criteria for incentive payments, including establishing a regulatory \$200,000 payment limit similar to CSP, and ensuring that incentive contracts support a participant's ability to transition to CSP eligibility. While there were no comments submitted that opposed the \$200,000 payment limit in this section, NRCS may consider setting a contract limit on EQIP incentive contracts in the future.

No change is being made to the regulation in response to this issue.

Payment Rates

Comment: NRCS received comment on the topic of payment rates, including adding the cost of third-party measurement of environmental benefits of adopted practices to payment rates as well as soil testing and data collection costs associated with using emerging sustainability tools and platforms and emerging ecosystem markets; using additional financial incentives (for example, through increased foregone income payments or higher cost-share percentages for high-priority practices) to meet the funding goal for wildlife practices; concern that payments received by participants may exceed the actual costs associated with the practice; and recommending that States, not regions, set payment rates, as project costs can vary widely from State to State.

Response: NRCS follows a methodical approach and will consider each comment in developing payment schedules. The 2018 Farm Bill authorized increased payment rates for certain high-priority practices and for practices that address source water protection. Further, States can designate high-priority practices that will be eligible for higher payment rate at the State level. Policy requires soliciting input from State technical committees and the posting of payment schedules on a public website. In addition, as NRCS develops the functionality of digital tools, such as the Conservation Assessment and Ranking Tool (CART), the process of determining payment rate alignment with statutory factors will be refined. NRCS incorporates all statutory payment factors into regulations and ensures that payment rates are consistent between EQIP and CSP. No change is being made to the regulation in response to this issue.

Ranking

Comment: NRCS received comment recommending criteria changes to ranking and the weighting of ranking factors including that: ranking focus on the net benefit to stream flows; preference be given to operators who have demonstrated “best practices” (with a focus on nonpoint source pollution); accountability mechanisms be built to ensure practices are achieving the maximum benefit; States prioritize practices addressing multiple resource concerns; and priority for EQIP enrollment be provided to land transitioned through the CRP Transition Incentive Program (CRP-TIP) (see 16 U.S.C. 3835(f)(1)(E)).

Response: NRCS will continue to work cooperatively with its State and local partners to develop ranking criteria that fit national, State, and local priorities. These priorities may include net benefit to stream flows, nonpoint source pollution, the feasibility of requiring accountability mechanisms in contract implementation, or multiplicity of conservation benefits. However, NRCS is not requiring these specific ranking factors in every situation.

State Conservationists, in consultation with State technical committees, determine how many extra points to provide CRP-TIP in ranking. NRCS is committed to protecting CRP-TIP land in transition to a covered farmer or rancher and has incorporated this statutory priority in this final rule by adding language to §§ 1466.1 and 1466.20(b). No other changes are made to the regulation in response to this issue.

Paperwork Reduction Act and Effective Date

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.

Consistent with the use of the authority under 5 U.S.C. 808 related to Congressional review for the immediate effect date of the interim rule, this rule is also effective on the date of publication in the *Federal Register*.

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, reducing costs, harmonizing rules, and promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules

that are determined to be significant. 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 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below in the next section of this rule. The full regulatory impact analysis is available on <https://www.regulations.gov/>.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, 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 savings from deregulatory actions. This rule involves transfer payments and is not required to comply with Executive Order 13771.

In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. NRCS reviews regulations and makes changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Cost Benefit Analysis

Most of this rule’s impacts consist of transfer payments to producers for completed conservation practices under EQIP contracts. There are also costs and benefits, which are described after a discussion of the transfers. The 2018 Farm Bill

increases EQIP funding over 2014 Farm Bill funding by 15 percent on average to \$1.84 billion per year. From FY 2014 through 2018, EQIP was authorized at \$8.0 billion, but annual funding restrictions resulted in actual authority being \$7.51 billion, for an annual average amount of \$1.50 billion. In contrast, the authorized level for EQIP for FY 2019 through 2023 is \$9.18 billion (assuming future funding is 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.

NRCS recognizes that a participant incurs costs in gaining access to EQIP. These costs are in addition to the participant’s share of the cost of implementing conservation activities under EQIP. NRCS estimates the total cost of accessing the program over 5 years to be \$17.7 million. The cost to participants of implementing conservation practices over 5 years is estimated at \$4.46 billion and total transfers (NRCS funds) over 5 years are estimated at \$9.18 billion. Given a 3 percent discount rate, this translates into a projected annualized real cost to producers for implementing conservation practices of \$855.10 million and projected annualized real transfers of \$1.76 billion (Table 1). In addition, participants incur \$3.5 million in access costs in nominal terms.

Table 1. Annual Estimated Costs, Benefits, and Transfers.

Category	Annual Estimate
Participant costs	
Access ^a	\$3,549,676
Implementation ^b	\$855,100,000
Benefits.....	Qualitative
Transfers ^c	\$1,760,000,000

^a All estimates are discounted at 3 percent to 2019 \$ except for the participant access cost, which is nominal.

^b Imputed cost of applicant time to gain access to EQIP.

^c Participant share of the cost of implementing conservation practices under EQIP.

The costs associated with this rule consist of the administrative costs of applying for EQIP funding and are described in the full regulatory impact analysis. The benefits of

this rule are the environmental improvements that are due to the increased conservation practices over and above those that farmers privately undertake. Conservation practices funded through EQIP will continue to: 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 which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and improvements in air quality (such as reduced risk of algal blooms or reduction in methane emissions, respectively). NRCS estimates that the expenditures, from both public and private sources, of implementing EQIP conservation practices will be \$13.6 billion dollars (FY 2019 through 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 through 2018, wildlife practices accounted for 7.6 percent of EQIP funds through wildlife and landscape initiatives and 16 designated wildlife conservation practices. The 2.4 percent increase in funding for wildlife to meet the new 10 percent level will likely occur through greater support for existing wildlife initiatives and may 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 this target to 50 percent for each of fiscal 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 WMEs like irrigation districts, ground water management districts, and acequias, along with providing the Secretary with the authority to waive AGI and payment limits to encourage continued efforts in agricultural water conservation. In some states, particularly in the West, these WMEs 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 in the interim rule established a payment limit of \$900,000 on all contracts with WMEs.

The 2018 Farm Bill establishes conservation incentive contracts to address up to three priority resource concerns for each land use within a given watershed, or other region, or area. Contracts will range from a minimum of 5 years to up to 10 years in length and provide an annual payment and incentive practice payments. NRCS has established a payment limit of \$200,000 to align with CSP. The impact of these new conservation 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 conservation incentive contracts will have, the aggregate benefits from these new conservation 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 performance. This is because existing organic initiative contracts are usually well below the existing multi-year payment limit of \$80,000 set by 2014 Farm Bill. Currently,

organic participants who exceed the organic initiative payment limit use other EQIP funding mechanisms. The increase in the organic initiative limit to \$140,000 may attract producers who have higher organic practice costs or perhaps larger operations, and EQIP participants may make greater use of the organic initiative and designated funding pool.

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 this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of NEPA (42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR 1500 through 1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). NRCS conducted an analysis of the EQIP interim rule, which 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 1508.1(l)). 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 EIS is not required to be prepared (40 CFR 1508.1(l)). 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 1502.16(b)), when not interrelated to natural or physical environmental effects. The EA and FONSI were available for review and comment for 30 days from the date of publication of the interim rule in the *Federal Register*. NRCS considered this input and updated the EA and FONSI with information relevant to environmental concerns and bearing on the proposed action.

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 program 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 does not, to their knowledge, have Tribal implication that require Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the two 2018 Farm Bill Tribal consultations 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 consultation, NRCS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified here in this rule are not expressly mandated by legislation. OTR has determined that Tribal consultation for this rule is not required at this time.

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 held several sessions with Indian Tribes and Tribal entities across the country in FY 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. NRCS will continue to conduct these sessions with Indian Tribes and Tribal entities.

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.

Accordingly, for the reasons stated above, the interim rule amending 7 CFR part 1466, which was published at 84 FR 69272 on December 17, 2019, is adopted as final with the following changes:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

1. The authority citation for part 1466 continues to read as follows:

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

2. Amend § 1466.1 by revising paragraphs (a)(2) through (4) to read as follows:

§ 1466.1 Applicability.

(a) * * *

(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 that address resource concerns related to organic production; soil, water, and air quality; wildlife habitat; nutrient management associated with crops and livestock; pest management; ground and surface water 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:

(i) Producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner; and

(ii) To the maximum extent practicable, avoid the need for resource and regulatory programs.

(4) The purposes of EQIP are achieved by planning and implementing conservation practices on eligible land to address identified, new, or expected resource concerns, including such resource concerns related to lands enrolled under a Conservation Reserve Program contract that are transitioning into production as specified in 16 U.S.C. 3835(f).

* * * * *

3. Amend § 1466.3 by revising the definition for “Comprehensive nutrient management plan (CNMP)” to read as follows:

§ 1466.3 Definitions.

* * * * *

Comprehensive nutrient management plan (CNMP) means a conservation plan that is specifically for an AFO. A CNMP identifies conservation practices and management activities that, 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 applicable natural resources including water and air quality associated with an AFO. A CNMP is developed to assist an AFO owner or 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.

* * * * *

4. Amend § 1466.4 by revising paragraph (a) to read as follows:

§ 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 ground and surface 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 and increased resilience against drought and weather volatility;

(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 and improvement of soil health 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.

* * * * *

5. Amend § 1466.6 by revising paragraph (d)(1) to read as follows:

§ 1466.6 Program requirements.

* * * * *

(d) * * *

(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), (ii), and (iii) of this section can be met:

(i) The entity is a public or semipublic agency or organization,

(ii) Its purpose is to assist private agricultural producers manage water distribution or conservation systems, and

(iii) The water conservation or irrigation practices support a water conservation project under § 1466.20(c) that will effectively conserve water, provide fish and wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Chief.

* * * * *

6. Amend § 1466.7 by revising paragraph (d) to read as follows:

§ 1466.7 EQIP plan of operations.

* * * * *

(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:

(1) Develop a CNMP by the end of the contract period; and

(2) Implement any applicable conservation practices in the EQIP plan of operation consistent with an approved CNMP.

* * * * *

7. Amend § 1466.20 as follows:

a. In paragraph (b)(2)(viii), remove the word “and”;

b. Add paragraph (b)(2)(ix); and

c. Redesignate paragraph (b)(2)(xi) as paragraph (b)(2)(x).

The addition reads as follows:

§ 1466.20 Application for contracts and selecting applications.

* * * * *

(b) * * *

(2) * * *

(ix) The land is enrolled under a CRP contract transitioning to a covered farmer or rancher as specified in 16 U.S.C. 3835(f); and

* * * * *

8. Amend § 1466.31 by revising paragraph (a) to read as follows:

§ 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, including field research, 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.

* * * * *

9. Amend § 1466.32 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c) to read as follows:

§ 1466.32 Conservation innovation grant funding.

* * * * *

(c) *Authority to reduce matching requirement.* The Chief may reduce the matching requirements of paragraphs (b)(1) and (2) of this section, provided that the applicant is:

- (1) An historically underserved producer;
- (2) A community-based organization comprised of, representing, or exclusively working with historically underserved producers on a CIG project;
- (3) Developing an innovative conservation approach or technology specifically targeting historically underserved producers' unique needs and limitations; or
- (4) An 1890 or 1994 land grant institution (7 U.S.C. 3222 et seq.), Hispanic-serving institution (20 U.S.C. 1101a), or other minority-serving institution, such as an historically Black college or university (20 U.S.C. 1061), a tribally controlled college or

university (25 U.S.C. 1801), or Asian American and Pacific Islander-serving institution
(20 U.S.C. 1059g).

* * * * *

Kevin Norton,
Acting Chief,
Natural Resources Conservation Service.

Robert Stephenson,
Executive Vice President,
Commodity Credit Corporation.

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