

with policies outlined in §1465.24 provided the modifications meet AMA purposes and are in compliance with this part.

## PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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### Subpart A—General Provisions

#### § 1466.1 Applicability.

(a) The purposes of the Environmental Quality Incentives Program (EQIP) are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental bene-

fits. Through EQIP, NRCS provides technical and financial assistance to eligible agricultural producers, including nonindustrial private forest landowners (NIPF) and Indian Tribes, to help implement conservation practices which address soil, water, and air quality; wildlife habitat; surface and groundwater conservation; energy conservation; and related resource concerns. EQIP's financial and technical assistance helps producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. The purposes of the program are achieved by planning and implementing conservation practices on eligible land.

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

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

#### § 1466.2 Administration.

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

(b) NRCS supports locally-led conservation by soliciting input from the State Technical Committee and the Tribal Conservation Advisory Council at the State level, and local working groups at the county, parish, or Tribal level to advise NRCS on issues relating to EQIP implementation. Recommendations from the State Technical Committee and the Tribal Conservation Advisory Council may include but are not limited to:

- (1) Recommendation for program priorities and criteria;
- (2) Identification of priority resource concerns;
- (3) Recommendation of which conservation practices will be effective to treat identified priority resource concerns; and

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

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under the Regional Conservation Partnership Program (RCPP), if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP. Consistent with section 1271C(c)(3) of the 2014 Act, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

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

#### § 1466.3 Definitions.

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

*Agricultural land* means cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

*Agricultural operation* means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the pro-

ducer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

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

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

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

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

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

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

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

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm,

ranch, or NIPF for not more than ten consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

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

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

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

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

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

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management, and other plans or activities determined acceptable by the Chief. Approved conservation practices are listed in the NRCS FOTG.

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

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

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

*EQIP plan of operations* means the document that identifies the location and timing of conservation practices

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

*Estimated income foregone* means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice. Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.

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

*Forest management plan* means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester or Indian Tribe; or another plan determined appropriate by the State Conservationist. The plan is intended to comply with Federal, State, Tribal, and local laws, regulations, and permit requirements.

*Habitat development* means the application of conservation practices to establish, improve, protect, enhance, or restore the conditions of the land for

the specific purpose of improving conditions for fish and wildlife.

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

*Indian land* means:

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

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

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

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

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

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

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

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

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

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

*Limited resource farmer or rancher* means either:

(1) Individual Producer:

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(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data), or

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

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

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

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

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

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

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

*Natural Resources Conservation Service* is an agency of USDA, which has re-

sponsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

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

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

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

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

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

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

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as well as the estimated income foregone by the producer for designated conservation practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 1466.4 National priorities.

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

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

(2) Conservation of ground and surface water resources;

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

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

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

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

(b) In consultation with other Federal agencies and Indian Tribes, NRCS may undertake periodic reviews of the national priorities and the effects of program delivery at the State and local

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levels to adapt the program to address emerging resource issues. NRCS may:

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

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

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

#### § 1466.5 Outreach activities.

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

#### § 1466.6 Program requirements.

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

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

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

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

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

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

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

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

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

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource, beginning farmer or rancher, and payment eligibility as established by 7 CFR part 1400;

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

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

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

cluded in the agricultural operation, and other types of agricultural land used for production of livestock. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land; or

(2) Publicly owned land where:

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

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

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

(3) Indian land.

#### § 1466.7 EQIP plan of operations.

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

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

(c) The EQIP plan of operations must include:

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

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

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

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

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

(d) If an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree

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to develop and implement a CNMP by the end of the contract period.

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

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

### § 1466.8 Conservation practices.

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

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

(1) Either the applicant or another producer has initiated or implemented prior to application for the program; or

(2) Has been initiated or implemented prior to contract approval, unless a waiver was granted by the Chief prior to the practice implementation.

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

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

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the new technology or management approach.

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

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

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

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

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

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

### Subpart B—Contracts and Payment

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

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

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

(2) NRCS, to the greatest extent practicable, will group applications of

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similar crop, forestry, and livestock operations for evaluation purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 1466.21 Contract requirements.**

(a) In order for a participant to receive payments, the participant must enter into a contract agreeing to implement one or more conservation

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

(b) An EQIP contract will:

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

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

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

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

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

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the EQIP contract's conservation practices, consistent with the provisions of § 1466.25,

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

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

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

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

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

(c) The participant must start at least one financially assisted practice

within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start conservation practice within the first year of the contract, the participant can request a modification from NRCS.

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

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

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

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

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

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

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

### § 1466.23 Payment rates.

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

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

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

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

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

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

(6) Other pertinent local considerations.

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

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

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

(ii) Estimated income foregone is 100 percent, or

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

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

(A) Soil health;

(B) Water quality and quantity improvement;

(C) Nutrient management;

(D) Pest management;

(E) Air quality improvement;

(F) Wildlife habitat development, including pollinator habitat;

(G) Invasive species management; and

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

(2) Notwithstanding paragraph (b)(1) of this section, a participant that meets the definition of a veteran farmer or rancher or the definition a historically underserved producer under §1466.3 may be awarded the applicable payment rate and an additional rate

that is not less than 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the incurred costs estimated for the conservation practice.

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

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

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

**§ 1466.24 EQIP payments.**

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

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(b) Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, may not exceed in aggregate \$20,000 per fiscal year or \$80,000 during any 6-year period.

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

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

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

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

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

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

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

member receives a payment directly or indirectly.

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

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

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

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

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

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

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

(10) NRCS may issue advance payments to participants that are historically underserved producers up to 50 percent of the anticipated amount of the costs incurred for the purpose of

purchasing materials or services to implement a conservation practice. Eligibility for advance payment is contingent upon the requirement that the participant must obtain an NRCS approved practice design prior to approval of the advance payment. Advance funds paid to program participants must be expended within 90 days from receipt of funds or returned to NRCS within a reasonable time as determined by NRCS.

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

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

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the contract continues to meet the purposes of the program, and the contract modification is approved by NRCS.

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

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

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

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

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

or refuses to assume responsibility under the contract.

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

**§ 1466.26 Contract violations and terminations.**

(a) NRCS may terminate a contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 1466.27 Conservation Innovation Grants.**

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

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

(2) *Grant agreement* means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the prin-

cipal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law and substantial Federal involvement is not anticipated.

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

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

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

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

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

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

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

(3) Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in grants.gov or successor Federal

grants portal. In addition, at the Chief's discretion, each State may implement a separate State-level component of CIG.

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

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

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

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

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

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

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

(iii) Adapt conservation technologies, management, practices, systems, pro-

cedures, approaches, and incentive systems to improve performance, and encourage adoption,

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

(v) Demonstrate transferability of knowledge.

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

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

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

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

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

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

(3) Up to 10 percent of the total funds available for CIG may be set aside for

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applications from historically underserved producers or veteran farmers or ranchers, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.

(f) The CIG APF will contain guidance on how to apply for the grants competition. CIG will be advertised through the NRCS Web site and *grants.gov* or other Federal grants portal. Grant applications will be available on the NRCS Web site or by contacting NRCS at the address provided in the APF. CIG grant applications will consist of standard cover sheet and budget forms, in addition to a narrative project description and required legal declarations and certifications.

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

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

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

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

(4) NRCS may choose to adhere to the CIG national resource concerns for

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a state or may select a subset of those concerns that more closely match the resource concerns of the State.

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

### Subpart C—General Administration

#### § 1466.30 Appeals.

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

#### § 1466.31 Compliance with regulatory measures.

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

#### § 1466.32 Access to operating unit.

Any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for

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

### § 1466.33 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, but the participant believes that a good faith effort to comply was made, the participant may request equitable relief under § 635.3 in chapter VI of this title.

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

### § 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, joint venture, legal entity, or Tribe will be made without regard to questions of title under State law and without regard to any claim or lien against the

crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will be applicable to contract payments.

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

### § 1466.35 Misrepresentation and scheme or device.

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

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

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

(2) Made any fraudulent representation;

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

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

### § 1466.36 Environmental credits for conservation improvements.

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

with the purposes and requirements of the EQIP contract and with this part.

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

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

## PART 1467—WETLANDS RESERVE PROGRAM

Sec.

- 1467.1 Applicability.
- 1467.2 Administration.
- 1467.3 Definitions.
- 1467.4 Program requirements.
- 1467.5 Application procedures.
- 1467.6 Establishing priority for enrollment of properties in WRP.
- 1467.7 Enrollment process.
- 1467.8 Compensation for easements and 30-year contracts.
- 1467.9 Wetlands Reserve Enhancement Program.
- 1467.10 Cost-share payments.
- 1467.11 Easement participation requirements.
- 1467.12 The WRPO development.
- 1467.13 Modifications.
- 1467.14 Transfer of land.
- 1467.15 Violations and remedies.
- 1467.16 Payments not subject to claims.
- 1467.17 Assignments.
- 1467.18 Appeals.
- 1467.19 Scheme and device.
- 1467.20 Market-based conservation initiatives.

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

SOURCE: 74 FR 2328, Jan. 15, 2009, unless otherwise noted.

### § 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

### § 1467.2 Administration.

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

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

(c) The State Conservationist will seek advice from the State Technical Committee on the development of the geographic area rate caps of compensation for an easement, a priority ranking process, and related policy matters.

(d) NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS to carry out such delegated responsibilities.

(e) NRCS may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance.

(f) NRCS shall consult with the U.S. Department of the Interior's Fish and Wildlife Service (FWS) at the local level in determinations of land eligibility and as appropriate throughout the program implementation process.