DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

RIN 0578–AA19

Environmental Quality Incentives Program

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a proposed rule for the Environmental Quality Incentives Program (EQIP). This proposed rule describes how CCC intends to implement EQIP as authorized by amendments in the Federal Agriculture Improvement and Reform Act of 1996 to the Food Security Act of 1985. The United States Department of Agriculture (USDA) seeks comments from the public which will be used to make revisions, if necessary, that will be issued in a final rule.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: All comments concerning this proposed rule should be addressed to Lloyd E. Wright, Director, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890. Attention: EQIP. Fax: 202–720–1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the Natural Resources Conservation Service (NRCS) Federal Register homepage and submit comments at http://astro.itc.nrcs.usda.gov:6500.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890. 202–720–1845. Fax: 202–720–1838.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is an economically significant regulatory action because it may result in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 6029, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Regulatory Impact Analysis document prepared for this rule. The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The program was authorized at $1.3 billion over the seven-year period of FY 1996 through FY 2002, with annual amounts of $200 million per year after the initial transition year of $130 million.

NRCS estimates that 37 million acres of agricultural land would be treated over the seven years of the program, including 19 million acres of cropland, 4 million acres of pasture, and 14 million acres of rangeland. Of the 37 million acres treated, an estimated 31.5 million acres are expected to be within priority areas. The projected national impact on participants' net farm income ranges from increases of $155 to $500 million per year, with a medium impact estimate of $310 million per year. These positive returns come from the incentive payments, on-site benefits to the land and crops, and lower operation and repair costs attributable to the conservation practices. NRCS estimates that an additional $49 to $166 million annually, with a medium impact estimate of $117 million annually on-site benefits will accrue to participants from the enhanced productivity associated with long-term maintenance of their soil resource base. Estimated total on-site returns are between $204 million and $666 million annually, with a medium impact estimate of $247 million annually.

The environmental benefits off-site are projected to be between $247 and $417 million annually, with a medium impact estimate of $336 million annually. Some of the off-site environmental benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, reduced flood damages. Additional benefits are from reduced pollution of surface and groundwater from agrochemical, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat.

The total monetary benefits from full implementation of EQIP are therefore estimated to be $763 million per year. Providing for an allowance for the accrual of treated acreage over time and adjusting to an annual basis (at a 3% interest rate), the annualized net benefits are estimated to be $439 million over the life of the program. The capitalized Federal cost of the program is about $195 million per year (at a 3% interest rate). EQIP participants incur costs associated with their share of cost-share contracts and the operation and maintenance of conservation practices, and these costs are reflected in the net benefits estimate. A copy of this analysis is available upon request from Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

NRCS will revise and enhance this analysis for the final rule. Future quantitative work will seek to estimate the amount of farmland in different areas by type of agricultural operation where farmers are likely to adopt the conservation measures expected to be profitable in the baseline, i.e. if the program were not to be implemented. As part of this estimate, NRCS will also seek to assess the extent to which other programs are affecting the adoption of conservation measures and reflect this in the baseline. Future analysis will seek to disaggregate point source and nonpoint source treatments in the program, and the impacts of each will be estimated independently. To the extent possible, alternative allocations of program dollars across different conservation practices will be quantified and their impacts estimated.

To better implement the program to maximize environmental benefits per dollar expended, as required by the Federal Agriculture Improvement and Reform Act of 1996 to the Food Security Act of 1985, NRCS seeks public comment, data, or references that can quantitatively or qualitatively enhance its analytical efforts. NRCS especially welcomes comments or data on levels or trends in conservation technology adoption, the on- and off-site returns to various conservation practices, and other literature about incentive schemes for technology adoption.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a

notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

It has been determined through an Environmental Assessment (EA) that the issuance of this proposed rule will not have a significant effect on the human environment. Copies of the EA and finding of no significant impact may be obtained from Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Paperwork Reduction Act

This proposed rule sets forth procedures for implementing EQIP. CCC needs certain information from potential applicants, in order to carry out the requirements of the program. CCC submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. CCC prepared an Information Collection Request (ICR) document; the public may obtain a copy of this request from Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Title: Environmental Quality Incentives Program, Wildlife Habitat Improvement Program, and Farmland Protection Program.

OMB Control Number: 0560–0174.

Expiration Date of Approval: Three years from OMB approval.

Type of Request: Revision.

Abstract: The Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, authorized USDA to implement the Environmental Quality Incentives Program, the Wildlife Habitat Incentives Program (WHIP), and the Farmland Protection Program (FPP). This rule sets forth the procedures for producers to apply and participate in the Environmental Quality Incentives Program. Pursuant to § 1466.20, producers may file an application for EQIP participation at a USDA service center. NRCS will collect information from a participant on the resource problems to be addressed, evaluate the information, and, working with the participant, develop a conservation plan that describes the needed practices or land management changes. This plan becomes a part of the EQIP contract, and CCC will make payments to producers as the producers carry out the provisions of the contract. USDA submitted to OMB proposed forms that CCC will use for the application, the contract, and for the NRCS collection of information related to resource needs.

Estimate of Burden: CCC estimates the public reporting for the information collection associated with EQIP forms is an average of 90 minutes per applicant.

Respondents: Agricultural producers who wish to participate in EQIP.

Estimated Number of Respondents: 15,000.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 23,700 hours.

Additionally, CCC shall utilize information supplied by local work groups to designate particular geographic areas as priority areas for program funding, under EQIP. Staff from State and local governments shall comprise part of these local work groups, and thus information collected from these groups is governed under the Paperwork Reduction Act.

For the local work groups, the annualized cost to EQIP respondents is $4,200,000. This figure is based on 300,000 burden hours times an average wage of $14.00 per hour (wages for State and local agency staff average approximately $14 an hour).

There also exists a burden associated with development of conservation plans and follow-up verification of the conservation practices adopted pursuant to the EQIP conservation plan. For the collection of information resulting from the development of conservation plans and subsequent verification of practices, the annualized cost to respondents is $1,440,000. This figure is based on 120,000 burden hours times the wage of $12.00 per hour.

CCC requests comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

USDA will accept comments on this information collection at: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890. USDA will incorporate all comments as part of the public record.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection(s) of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to USDA on the proposed regulations. CCC submitted the information collection requirements to OMB, totaling 443,700 burden hours.

Executive Order 12788

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780 and 11 must be exhausted.

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

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 104–354, USDA classified this proposed rule as major and CCC conducted a risk analysis. The risk analysis establishes that the EQIP proposed rule will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the risk analysis is available upon request from Jeffrey R. Loser, Conservation and Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) amended the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) to re-authorize the Environmental Conservation Acreage Reserve Program as the umbrella conservation program encompassing the Conservation Reserve Program (CRP) (16 U.S.C. 3831–3836), the Wetlands Reserve Program (WRP) (16 U.S.C. 3837 *et seq.*), and the newly created Environmental Quality Incentives Program (16 U.S.C. 3840). Under the Environmental Conservation Acreage Reserve Program, the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements, other Federal and State environmental laws, and to meet other conservation needs.

The Environmental Quality Incentives Program (EQIP) combines into one program the functions of several conservation programs administered by the Secretary of Agriculture, including the Agricultural Conservation Program, the Agricultural Water Quality Incentives Program, the Colorado River Salinity Control Program, and the Great Plains Conservation Program, which are rescinded by the 1996 Act. Through EQIP, CCC provides flexible technical, financial, and educational assistance to farmers and ranchers who face serious threats to soil, water, and related natural resources on their land, including grazing lands, wetlands, forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, CCC will provide assistance in a manner that maximizes environmental benefits per dollar expended, helps producers comply with the eligibility provisions of the 1985 Act, and helps farmers and ranchers meet Federal and State environmental requirements. CCC will use a consolidated and simplified conservation planning process to reduce any administrative burdens that would otherwise be placed on producers.

The 1996 Act provides that funds of the CCC will be used to fund the assistance provided under EQIP. For fiscal year 1996, $130 million was made available to administer an interim program; a minimum of $200 million is to be made available for each of fiscal years 1997 through 2002. Fifty percent of the funding available for the program will be targeted at practices relating to livestock production.

I. Priority Area Designation

CCC will primarily offer the program in priority areas throughout the Nation, using the services of the Natural Resources Conservation Service (NRCS), county and state committees of the Farm Services Agency (FSA), and the Cooperative State Research, Education, and Extension Service (CSREES). CCC will designate certain watersheds, regions, or areas of special environmental sensitivity or having significant soil, water, or related natural resource concerns as priority areas. Unlike some prior conservation programs that provided program assistance to virtually all agricultural locations in the Nation, EQIP will place an emphasis on priority areas that are selected because of the natural resource and environmental concerns. The emphasis of priority areas helps assure that the most environmentally sensitive areas are considered and funds are directed to the areas in most need. The use of the priority area concept focuses assistance on those areas that pose the most serious threats to soil, water, and related natural resources. Implementation of conservation measures will be accelerated in these areas. Past experience has shown that by focusing assistance, greater environmental benefits are derived.

When considering where the program would be delivered, several alternatives were considered. One alternative was to have priority areas selected at the national level based on analysis of existing scientific data characterizing natural resource problems and existing environmental assessments. This approach would provide a consistent and dominant role for national-level resource concerns and selection options. However, it would lack State and local buy-in by individuals, producers, landusers, and groups which have vested interests in the resolution of natural resource problems.

Another alternative was to utilize a partnership process with States, other Federal agencies, and local work groups providing input and recommendations for selecting priority areas. In this alternative the NRCS national office will provide national guidance which is used by NRCS State conservationists, in consultation with State technical committees, to select priority areas from proposals submitted by local work groups. This locally-led conservation effort would likely include the State and local buy-in that is missing in the first alternative. This alternative was selected.

The 1996 Act does not restrict EQIP to only priority area; therefore, another alternative was considered and selected to make the program available for EQIP purposes that are outside of funded priority areas. A primary issue with this alternative was the amount of funds to be made available for this purpose. In considering this issue, it was concluded that providing assistance to producers located outside of funded priority areas should be limited through the allocation process. Not allowing any assistance outside of funded priority areas would fail to address significant statewide natural resource concerns that may be widespread geographically. This approach would enable serious natural resource concerns to be addressed regardless of their location. At the same time, the basic intent to focus the program in priority areas would require a limitation on the amount of EQIP funds for assistance outside funded priority areas.

CCC seeks comments regarding the process for designating priority areas and the development of ranking criteria for both priority areas and significant statewide natural resource concerns.

A. Development of Guidance for Designation of Priority Areas

To establish these priority areas, the NRCS national office in consultation with other Federal partners, will develop through national guidance an identification and rating process that will seek to maximize the environmental benefit per dollar expended. That process will give weight to considerations such as the:

- Special environmental sensitivity or degradation in an area, and the expected environmental benefit from the program;
- Extent and scope of State, local, and other non-Federal contributions;
- Expected impact of the program on a participant's ability to satisfy nonpoint source requirements and other Federal and State environmental laws;
- Federal cost; and
- Ways to measure performance and success.

The NRCS State conservationist will use the national guidance, with advice of the State technical committee on adapting the guidance to State and local conditions, for the selection of priority areas, and to make other decisions. The guidance will address: interpretations of what factors create the serious threats to soil, water, and related resources; natural resource quality criteria which describe the treatment level for identified natural resource concerns for a particular area; eligible agricultural land, including crop history and livestock production activities; and other relevant information. NRCS Regional conservationists will coordinate guidance for multi-state areas and regions.

The State technical committee will also advise the State conservationist on developing, within national guidelines, ranking criteria that consider such factors as: condition of the natural resources and significance of the concern; impact the program could have on the natural resource concern; existence of programs and/or projects already implemented; financial incentives from other sources; technical support from other agencies; importance in meeting State and local environmental laws; commitment of local producers to implement the program; and evidence that producers in critical areas will participate. CCC will give special consideration to priority areas that contain multiple-conservation benefits. CCC will also give special consideration in the ranking process to other agency or conservation group participation, such as providing technical, educational, or financial assistance. This participation will lessen the requirement for Federal assistance and will strengthen the Federal, State, and local partnership.

B. Needs Assessment and Selecting Priority Areas

The process for selecting the priority areas will begin with the local conservation district(s) convening local work groups to advise NRCS in various conservation issues. These local work groups consist of representatives of the conservation district, NRCS, FSA, FSA county committee, CSREES, and other Federal, State or local agencies, including Tribes, as needed with expertise in natural resources. CCC encourages, therefore, State and local agency representatives to participate in these local work groups. State and local agency representatives can contact the NRCS State Conservationist for more information about these local work groups in their area.

Local work groups, under local conservation district leadership, will use the national and State guidance to develop comprehensive conservation needs assessments of the natural resource conditions in a locality. The public is welcome to provide information related to such natural resources conditions to the local work group. Through the needs assessment, the local work group will, among other things, identify natural resource concerns and goals, expected outcomes, means for measuring and evaluating achievement of these outcomes, and solutions to resource problems. NRCS will incorporate the local conservation needs assessment into the agency's State, regional, and national natural resources strategic plans, thus aiding in program decision-making.

The local work group will provide and use the information contained in the needs assessment to develop proposals for priority areas, suggest ranking criteria for the CCC to prioritize producer's applications, and provide further input. The local work group, through the local NRCS representative, will forward the proposals for priority areas to the NRCS State conservationist. The NRCS State conservationist, with the advice of the State technical committee, will periodically approve priority areas in accordance with the priorities established for the program. Proposals that are not approved by the NRCS State conservationist may be resubmitted for subsequent consideration.

The local work groups serve a valuable function to the overall ability of EQIP successfully resolving significant resource concerns. While assisting CCC in identifying local concerns and resources, CCC believes that the interaction and coordination that will ensue within and among these local work groups will help localities to build coalitions on a watershed, area, or regional basis, and thus enable local residents to find solutions for the environmental problems that confront them. NRCS will work with the local work groups to further this end. CCC hopes that, by building stronger local coalitions, residents will possess the necessary institutions and tools to address significant environmental issues that transcend political boundaries. Even if CCC does not allocate funds to a particular priority area in any given year, these coalitions or groups will be in a position to avail themselves of other program assistance outside of EQIP. CCC requests comments on the best ways for CCC to utilize these work groups and nurture their capacity to address environmental concerns.

The NRCS State conservationist will periodically submit a funding request for highly rated State-approved priority areas to the NRCS national office. An interagency team comprised of Federal agencies with interests in this program will review and prioritize the submissions received from the NRCS State conservationists and, based on national program objectives and criteria, make recommendations for funding to the Chief of NRCS. The Chief of NRCS, who is a vice-president of the CCC, will consider the team's recommendations and decide periodically which priority areas will receive funding. FSA must concur with the decisions for funding before funds are allocated. Areas to which CCC does not allocate funds may be resubmitted for later funding decisions. State conservationists can continue current priority area designations or redesignate them if circumstances change. For instance, the changes may be improvements to the proposal with the addition of new information, or environmental conditions or conservation priorities for that State may change.

The Chief may also determine the need for national conservation priority areas where eligible producers may receive enhanced program assistance from EQIP, WRP, or CRP. If the Chief designates any areas as national conservation priority areas, the Chief will also make these funding decisions with the concurrence of FSA.

CCC requests comments as to whether and in what manner the conservation priority goals under the Environmental Conservation Acreage Reserve Program should be jointly applicable to EQIP, CRP, and WRP for the relevant conservation concerns of water quality, wildlife habitat, or other concerns. CCC recognizes that the identified environmental problems in a geographic area may best be served by only one of the programs. In some cases, however, CCC may better address the identified environmental problems through the coordinated effort of the three programs. CCC may accomplish this through the targeting of funds and consolidating the application process, thus offering watershed, area, or regional coalitions and producers a greater opportunity for more effective and convenient program delivery. Accordingly, CCC seeks comments on the most appropriate, cost-effective manner in which to consider redesignation of these and other conservation priority areas.

C. Significant Statewide Natural Resource Concerns

State conservationists, with the advice of the State technical committee, may also determine that CCC can maximize environmental benefits per dollar by providing program assistance to producers with other significant natural resource concerns outside of approved and funded priority areas. These significant concerns may be of a similar nature as those found within a priority area, but they occur widespread and may not be concentrated in a specific geographic location. Upon request by a State conservationist, the Chief, with concurrence of FSA, may provide EQIP funds for the purpose of funding projects to address these identified significant statewide natural resource concerns. The Chief will give priority to States that establish programs to accelerate adoption of cost-effective,

special-emphasis practices which address these significant statewide natural resource concerns outside of priority areas.

II. Program Administration

A. Conservation Plan and Contract

Program participation is voluntary. A producer demonstrates interest in the program by submitting an application for participation. CCC will accept applications throughout the year, but will rank and select the offers of producers during designated periods. To rank and select the highest priority applicants, NRCS on behalf of CCC will evaluate the environmental benefits the producer offers to achieve by using the program. The evaluation uses ranking criteria that is based on national guidance and developed with the advice of the local work group to give a higher priority to projects that maximize environmental benefits per dollar expended. The FSA county committee, with NRCS concurrence, approves funding for the highest priority applications in a particular priority area.

Approved applicants will assume responsibility for developing and submitting a conservation plan that encompasses the producer's farming or ranching unit of concern. The producer must implement a conservation plan, acceptable to NRCS and approved by the conservation district, that protects the soil, water, or related natural resources in a manner that meets the purposes of the program. The producer develops a conservation plan in cooperation with the local conservation district and with the assistance of NRCS or other public and private natural resource professionals. The plan becomes part of an EQIP contract.

The contract specifies the cost-sharing or incentive payments the producer will receive from the CCC in return for applying the needed conservation practices and land use adjustments within a specified time schedule. CCC makes payments to the producer when the NRCS determines that the conservation practices specified in the contract are satisfactorily established. CCC expenditures under a contract entered into during a fiscal year will not be made until the subsequent fiscal year.

CCC's intention is to use this program to provide assistance to producers who, in the absence of financial incentives, would not otherwise apply conservation practices to address natural resource concerns. It is unlikely that without incentives producers would be inclined to undertake costly conservation practices to provide environmental benefits off their property. The role of EQIP in addressing such circumstances is clear. When the benefits accrue to the landowner, as well as to off-site areas, the policy question is more complicated. The cost benefit analysis discussed earlier estimates that participants' on-site benefits would be significant, totaling $427 million annually, while off-site benefits total $336 million annually. CCC seeks ''win-win'' conservation solutions, but recognizes that in cases where producers would adopt conservation practices in a timely manner without government assistance, then EQIP funds should be directed elsewhere. CCC seeks public comment on the role of EQIP in funding conservation practices that may be profitable.

Producers have various reasons to be reluctant to apply certain conservation practices, even when there may be financial benefit to them in the near or longer term from adopting these practices. CCC seeks public comment on what factors contribute to the reluctance of producers to adopt conservation practices, even when profitable.

The initial costs of applying conservation practices can be significant. Costs may include the direct costs associated with the practice as well as investments in other farm equipment to operate and maintain the conservation practice for which EQIP financial assistance would not be eligible. Without financial assistance producers cannot justify the investment for the expected returns within a relevant time frame. This is often the case under some conservation practices, such as grazing land management, crop residue management, and nutrient management, where it can take several years to realize the profits. CCC seeks information and comment on the time frame involved in experiencing profits from new conservation technology, and the extent to which farmers and ranchers cannot get sufficient credit in current markets or through other government programs to convert to more profitable conservation practices. CCC seeks public comment on the manner in which EQIP will work in the context of other programs that can or are supporting the adoption of conservation practices.

CCC intends to monitor and evaluate the program to assure that financial assistance is used in an appropriate way to maximize the environmental benefits per dollar it expends, and welcomes public comment on how CCC could best carry out this intention.

B. Large Confined Livestock Operations

The 1996 Act states that a producer who owns or operates a large confined livestock operation (as defined by the Secretary) shall not be eligible for cost-share payments through EQIP to construct an animal waste management facility. The report of the Conference Managers states that when determining whether an operation is a large confined livestock operation within the meaning of this provision, the Secretary will consider various resource and environmental factors, including regulations promulgated pursuant to the Clean Water Act (33 U.S.C. 1251–1387). The Secretary is expected to specify clearly the factors and considerations involved in developing the requirements for program eligibility and should follow notice and comment procedures. The Managers also expect the Secretary to take into account needs for maximizing environmental benefits in targeted watersheds affected by animal agriculture, the ability of operations to pay for the cost of animal waste management facilities, the obligations of operations under other environmental authorities, and the particular characteristics of modern livestock operations.

In considering how to define large animal operations, CCC explored a number of options. For example, for the National Pollution Discharge Elimination System (NPDES) authorized by the Clean Water Act, the Environmental Protection Agency (EPA) uses certain criteria when considering if a livestock facility is confined or concentrated. The facility must stable, confine, and feed or maintain animals for a total of 45 days or more in any 12-month period; and not sustain crops, vegetation, forage growth, or post-harvest residues within the confined area in the normal growing season over any portion of the facility.

The first part of this definition means that some animals must be kept on the lot or facility where waste is generated and/or concentrated for a minimum of 45 days. The second part of the definition distinguishes feedlots from pasture land, which is not subject to the NPDES program. Further, EPA has determined that a totally enclosed facility with no discharge (and no anticipated or potential discharge) of animal waste to waters of the United States is not subject to the NPDES program. CCC proposes to use this definition for a confined operation.

CCC considered using the 1,000 animal unit (AU) equivalents threshold, with some exceptions authorized, using the consideration elements specified in

the Conference Manager's report and variable cost-share rates for larger operations. This option offers some advantages, because most family and small farms are under this threshold and will be eligible for cost-sharing. This option would also target more program funds to smaller operations, limit funds to large operations, and provide flexibility to address State and local environmental needs when exceptions are granted. However, this option may not tend to maximize the environmental benefits per dollar expended because cost-share eligibility would not be based on environmental need and would only be indirectly related to the likelihood the landowner would not otherwise construct a waste management system. This threshold level may allow some major problems to be neglected by producers. While these producers may still be eligible for other EQIP assistance, withholding eligibility for animal waste management facilities may alienate the producers and thus CCC may lose the opportunity to obtain additional environmental benefits through other aspects of the program. It would exclude sectors of the livestock industry with higher shares of total operations above the threshold level, such as broiler operations where nearly four percent exceed 1,000 AU, compared to 0.6 percent for dairy and beef feedlot operations and 1.2 percent for hog operations. Over 70 percent of the total beef cattle are on feedlot operations that exceed 1,000 AU. (Reference: GAO/RCED–95–200BR Animal Waste Management and Water Quality Issues; Economic Research Service's analysis of 1992 Census of Agriculture data. Copies of GAO reports are available from the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, Maryland 20884–6015, or by calling (202) 512–6000 or fax (301) 258–4066.)

Another option considered by CCC was to base the national definition on the amount and environmental threat of manure and other animal waste generated in the confined livestock operation. Although this option would enable choices more closely related to the environmental issues and problems resulting from the animal manure, and would enable more operations that produce dry manure (primarily poultry and beef feedlots) to be eligible, it would have the disadvantage of retarding participation in the less-concentrated livestock sectors where a larger percentage of operations would be below the threshold level of 1,000 AU. This process also presents a complex and easily challenged process of defining thresholds by weight, volume, or environmental threat.

CCC also considered the option to use an economic achievability analysis, including the ability to pay for measures to meet environmental objectives. One such analysis is that conducted by EPA, the ''Economic Impact Analysis of National Nonpoint Source Management Measures Affecting Confined Animal Facilities,'' which was completed in 1995. ''This type of analysis will most likely result in defining large'' differently for different animal types. EPA's analysis indicates that dairies with 98 or more animal units (AU) can afford to implement animal waste runoff and storage systems without cost-shares. Thresholds for other animal types, as identified by EPA, are: beef feedlots, 300 AU; horse stables, 400 AU; dairies, 98 AU; poultry broilers and layers, 150 AU for liquid manure systems, 495 AU for continuous overflow watering; turkeys, 2,475 AU; and swine, 80 AU. Like the first option, some exceptions could be authorized.

This option would be most sensitive to a producer's ability to pay for needed facilities and would make more program funds available to small operations and provide flexibility to address State and local environmental needs. However, there are problems inherent in translating national level data to State and local conditions. Some operations with high potential for environmental benefits would be eliminated from program eligibility. It would be more restrictive toward poultry, hog, and dairy operations due to the very low threshold levels.

Therefore, having considered all these options, this proposed rule states that the State technical committee will advise the NRCS State conservationist on criteria to use to determine eligibility for receiving cost-share payments for animal waste management facilities. The criteria will include consideration of the elements specified in the Conference Manager's report cited above. In considering this definition, emphasis will be placed on assisting family farmers and ranchers, and not meatpackers, processors, and vertical integrators. CCC will provide national guidance, developed by NRCS in consultation with other national agencies and partners, to the State technical committee and NRCS State conservationist to clearly specify the factors and considerations involved in developing the requirements for program eligibility. The NRCS regional conservationist will provide oversight to achieve consistency between States.

CCC believes that this option provides maximum flexibility for State and local decision-makers, where the needs of the environment and the livestock operator are best determined, and thus best meets the intent of the 1996 Act. This method will provide the program with the maximum ability to resolve environmental problems in priority areas. It also incorporates the consideration of a person's ability to pay, regardless of the size of the operation. This option considers local, State, and Federal environmental authorities and requirements, not just the Clean Water Act or water quality. It will allow CCC to consider modern livestock operation characteristics, which vary depending on types of livestock, marketing strategies, geography, and State and local economic factors, from a State and local perspective. This approach is consistent with recommendations made by the Secretary's Advisory Committee on Agricultural Concentration in June, 1996, which emphasized the need to help the family farm. A copy of this report is available from the Agricultural Marketing Service, P.O. Box 96456, Washington, D.C. 20090–6456.

C. Outreach Efforts

The Administration and USDA endeavor to make Government programs accessible to all eligible citizens. In past conservation programs, some land was not adequately treated because limited-resource producers, small-scale producers, Tribes, Alaska natives, Pacific Islanders, and other producers have had low levels of participation for various reasons. In some cases, the economies and efficiencies of scale weighed against individuals who did not have large tracts of land. Additionally, some communities receive the bulk of their information from sources other than the traditional media services, and information about program benefits often did not reach the widest possible audience.

To address these deficiencies, CCC will establish special program outreach activities at the national, State, and local levels in order to ensure that producers whose land has environmental problems are aware, informed, and know that they are eligible to apply for program assistance. In its goal to offer assistance to those unlikely to adopt practices without Federal support, CCC will target its efforts to best achieve the greatest environment benefit per dollar by additional focus on limited resource farmers and others with historically low participation rates. CCC is exploring new possibilities to increase its outreach to these communities that historically have not participated extensively in CCC and other USDA programs. For

example, CCC is examining options such as permitting flexible schedules for limited-resource producers to apply practices and systems; offering low-cost conservation practice alternatives; and considering the value of a producer's labor as the producer's share of the cost. CCC welcomes any suggestions about how the agencies can improve program delivery on environmentally sensitive land managed by producers who have not participated historically in the conservation programs in order to increase the coverage and environmental benefits of the program.

D. Educational Efforts and Technical Assistance

Section 1240 of the 1985 Act charges the Secretary to implement EQIP as an integrated program of education, technical assistance, and financial assistance that focuses on targeted environmental and conservation issues. The success of EQIP as a conservation program depends largely on the quality of decisions made by farmers, ranchers, and the public and private providers of technical assistance.

USDA's development and delivery of high-quality educational opportunities to farmers, ranchers, and assistance providers should enhance the public's knowledge about the conservation opportunities available through EQIP and enhance the overall benefits that will be realized through the implementation of EQIP. Appropriate education will maximize public benefits by creating a knowledge base (among producers, agency staff, and private consultants) that will extend direct EQIP benefits beyond the actual acreage and life expectancy of financial and technical assistance programs.

USDA will develop a program education plan, including identification of customers and educational needs, development of educational goals and objectives, design of appropriate educational responses, delivery of educational programs, and evaluation of educational outcomes. USDA will extensively utilize existing educational materials and programs, and will focus efforts to areas and producers where EQIP is implemented. In the development of its program education plan, USDA will design a coordinated approach, including national, State, and local components, depending on the similar or unique educational needs identified.

CCC will encourage cooperation among education providers as well as the use of existing educational resources and programs that deal with EQIP-related issues. Although it will require more time initially for program planning and coordination, CCC believes that this coordinated approach will enable efficient use of resources in meeting broad educational needs; provide for local program assessments and development; maximize sharing between groups; and provide sufficient flexibility to shift educational efforts as priority conservation problems are solved and new priorities are identified.

Section 1240 of the 1985 Act also requires the program to provide flexible technical assistance. The quality and availability of technical assistance is essential to the successful implementation of EQIP because technical assistance contributes to informed decision-making and the implementation of sound and appropriate practices. Under EQIP, CCC will allocate funding to NRCS to provide technical assistance, ensure that technical assistance is open to individuals in agribusiness, and request the services of other public and private entities in the delivery of technical assistance to producers when deemed appropriate. NRCS will work directly with producers, local work groups, and State technical committees in carrying out their respective roles and responsibilities.

Under EQIP, NRCS will provide technical leadership for conservation planning, implementation, and assurance of quality service in the delivery of technical assistance. NRCS personnel will work directly with producers to help solve their natural resource concerns. NRCS will also draw upon the expertise of natural resource professionals in all sectors in its delivery of technical assistance to the producer.

A producer may seek technical assistance from NRCS or from other qualified sources. These qualified sources may include agricultural producers, certified crop advisors, agricultural cooperatives, and other technical consultants. These other sources can help a producer develop an EQIP conservation plan or assist with the layout, design, and installation of conservation practices. CCC will accept work performed by others if the work meets program requirements.

In this manner, producers have a variety of options available to them to address significant natural resource concerns on their farms or ranches. CCC shall assure that the quality of the assistance obtained from all sources will meet the requirements of the program.

E. Payment Limitations

The 1996 Act specifies that the total amount of cost-share and incentive payment paid to a producer under this chapter may not exceed $10,000 for any fiscal year or $50,000 for any multiyear contract. An exception to the annual limit is provided to allow payments to exceed the limitation on the annual amount of a payment on a case-by-case basis if it is determined that a larger payment is essential to accomplish the land management practice or structural or vegetative practice for which the payment is made and it is consistent with the maximization of environmental benefits per dollar expended and the purposes of EQIP. The 1996 Act further defines a producer as ''a person who is engaged in livestock or agricultural production (as defined by the Secretary).''

Congress, in the EQIP statute, required the maximization of environmental benefits per dollar expended, provided for interim administration of EQIP pending final regulations, and required that payments under an EQIP contract entered into during a fiscal year not be made until the subsequent fiscal year.

CCC reviewed several options for implementing the payment limitation provisions of EQIP, including the definition of a person. One option considered the use of a definition of landowner that is used in the Stewardship Incentives Program for the definition of a person. This was not chosen because most producers would have the additional burden of submitting additional information to FSA. Other options considered limiting the number of contracts a person may enter and limiting the number of entities in which an individual may be involved and receive payments. These options were not chosen because they provided little value or savings to the program but would have complicated the administration of the program.

It is proposed that similar payment limitation provisions as those set forth in 7 CFR part 1497 be used for EQIP. These provisions are currently used for CRP and Agriculture Market Transition Act participants. The consistent use of the provisions in part 1497, will result in the least burden to producers and the most fair and equitable administration of the program because persons who are currently participating, or who have participated in recent years, in the commodity program or CRP would not have to complete additional forms for payment limitation purposes. Further, in cases where producers may enroll in the CRP and EQIP at the same time, the confusion of different ''person'' definitions would be eliminated.

Specifically CCC proposes, the provisions in 7 CFR Part 1400 related to the definition of person and the

limitation of payments will be used, except that:

(1) States, political subdivisions, and entities thereof will not be persons eligible for payment.

(2) The provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F for determining whether foreign persons are eligible for payment, will not be used as they are not consistent with the intent and language of the EQIP statute.

(3) An exemption to the $10,000 fiscal year limitation would apply in cases where a producer with a current EQIP contract inherits land subject to another contract, because CCC recognizes that with EQIP contracts having 5- to 10-year terms, there may be complications when a producer already enrolled in EQIP inherits land subject to another EQIP contract.

(4) Payments in excess of the limitation may be made to a tribal venture if an official of the Bureau of Indian Affairs or a tribal official certifies that no one tribal member directly or indirectly will receive more than the limitation.

CCC welcomes public comment on this proposed manner for addressing the payment limitation provisions of the program.

Public Listening Forums

In April 1996, USDA held nine listening forums to provide opportunities for public comment in advance of rulemaking. USDA held these forums at Sacramento, California; Longmont, Colorado; Columbus, Georgia; Springfield, Illinois; Wyomissing, Pennsylvania; Sioux Falls, South Dakota; Abilene, Texas; Spokane, Washington; and Washington, D.C. More than 850 people attended these forums, including 206 speakers. In addition, USDA accepted written comments. USDA considered these public comments in the preparation of this proposed rule. The following is a brief summary of the issues raised in these comments and how the agency responded to those comments:

USDA received 357 comments on the roles of NRCS and FSA in implementing EQIP. Section 1466.2 of the rule discusses the roles of NRCS and FSA in the program.

USDA received 21 comments expressing general concerns about EQIP. Four commenters emphasized that EQIP needs to be flexible in how the program is delivered. One of the four said that flexibility will allow local people to creatively address conservation problems. A definition of technical assistance is provided in § 1466.3.

USDA received 59 comments on conservation plans under EQIP. Twelve commenters favored the whole-farm approach to designing conservation plans. Six commenters said that conservation districts should be involved in approving conservation plans. Section 1466.6 sets forth provisions relating to EQIP and conservation plans.

USDA received 63 comments about how EQIP funds should be used. Six commenters expressed concern that EQIP funds were only available to certain parts of the country. Six others wanted to know more about how EQIP funds were to be divided between technical assistance and cost shares. Section 1466.5 sets forth the manner in which CCC will set priorities for funding.

USDA received 17 comments on EQIP and the support and roles of conservation districts. Four commenters expressed support for local conservation districts' roles in EQIP. The provisions in Section 1466.3 address these issues.

USDA received 12 comments on how EQIP should give greater flexibility to State-level USDA managers in managing programs. Six commenters stressed the importance of this flexibility. These commenters wanted greater flexibility for the State-level managers to exercise more creativity in addressing environmental problems; other commenters indicated that greater flexibility will allow State-level managers to compensate for differences among agricultural operations and resource conditions. Section 1466.5 describes the input provided by the agency managers at the State and local levels.

USDA received 23 comments about the roles of State technical committees under EQIP. Five commenters suggested that State technical committee membership be expanded to include representatives of other conservation agencies, managers of resource management projects, and private conservation organizations. Section 1466.3 provides that the State technical committees are established in 16 U.S.C. 3861 and provides additional information about the committees.

USDA received 13 comments on EQIP contracts. Two commenters felt that the contract period set in the authorizing legislation is too long. Two others stated that EQIP projects should be based on their environmental merits and not on funding equations. Section 1466.21 addresses requirements for EQIP contracts.

USDA received 38 comments on EQIP and CRP. Three commenters expressed interest in how annual payments for EQIP and CRP should be dispersed. Three commenters suggested not allowing early releases on land with an erosion index of 15 or greater. Section 1466.23(b)(ii) sets forth the statutory requirement that a person cannot receive assistance under CRP, WRP, and EQIP for the same tract of land.

USDA received 36 comments on animal limits under EQIP, specifically the provisions in the EQIP legislation that provide that large confined livestock operations, as defined by the Secretary, will not be eligible for EQIP assistance with respect to waste treatment facilities. Most commenters said that herd size limits should be decided at the State level of NRCS. Six commenters said that Clean Water Act standards for animal waste management structures should apply to EQIP. Two commenters expressed concern about how animal limits may effect family farms and small operations. Section 1466.7 sets forth how the CCC will address size limitations.

USDA received 37 comments related to EQIP priority areas and program prioritization. Thirteen commenters expressed concern that equity for EQIP prioritization is needed nationwide. Seven commenters stated that conservation districts should play roles in EQIP prioritization. Section 1466.5 addresses priority area approval and areawide assessment.

USDA received five comments on EQIP and its relationship to wildlife. Three commenters said that the impacts on wildlife must be considered at each stage of EQIP's implementation. USDA also received seven comments about EQIP and riparian zone protection. Two stated that incentives should be provided for riparian zone protection.

USDA received seven comments on planting trees under EQIP. Three commenters suggested that incentives be offered to establish native warm-season grasses. Section 1466.4 sets forth eligibility criteria and Section 1466.7 sets forth the criteria for eligible practices.

Summary of Provisions

The rule is organized in three subparts. Subpart A contains general provisions related to the program.

Section 1466.1 sets forth the purpose, scope, and objectives of EQIP. The purposes of the program will be achieved by farmers and ranchers who voluntary develop conservation plans and enter into contracts with CCC to carry out the needed conservation

practices and land-use adjustments within a specified time schedule.

Section 1466.2 describes the roles of NRCS, FSA, and other agencies.

Section 1466.3 sets forth definitions for terms used throughout the part.

CCC particularly solicits public comment on the definition of ''large confined livestock operation.'' Under provisions of the 1996 Act, producers with large confined livestock operations are not eligible for cost-share payments on animal waste management facilities, but are eligible for payments on other conservation practices. The 1996 Act leaves the determination of large confined livestock operation to the Secretary. This rule does not establish a specific number of livestock as a standard for determining when a livestock operation will be regarded as ''large'' for the purpose of exclusion from eligibility for cost sharing on animal waste facilities. As discussed above, CCC proposes to use State technical committees to advise the State conservationist on eligibility criteria for cost-share payments for animal waste management facilities. CCC will base the criteria to make this decision on several factors. A focus will be placed on the needs for maximizing environmental benefits in targeted watersheds affected by animal agriculture and the ability of operations to pay for the cost of facilities. Other such factors include the requirements of other Federal and State laws, producer obligations under environmental authorities, and characteristics of modern livestock operations, as well as a desire to have a wide distribution of benefits among those enterprises that are generally, at least locally, small or medium sized operations which presumably may not have the same access to management techniques that protect the environment.

Section 1466.4 sets forth the requirements for participant eligibility and eligible land. It also describes the criteria CCC will consider in allocating funds for technical assistance.

Section 1466.5 describes the procedures and criteria for approving priority areas. Priority areas are identified through the priority area assessment process using local work groups, State technical committees, and State conservationists.

Paragraph (b) addresses providing technical, educational, and financial assistance to producers whose land has natural resource concerns outside of a priority area. Some EQIP funds will be used outside of funded priority areas for significant statewide natural resource concerns. Local work groups and State technical committees will provide advice to the State conservationist concerning the natural resource concerns where program assistance is needed, consistent with the advice provided for assistance in priority areas.

Section 1466.6 describes the requirements of the conservation plan that will be the basis of EQIP contracts. Producers will be required to develop and apply a conservation plan on the farm or ranch unit that addresses natural resource problems. The plan will be reviewed to ensure that it includes the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended in conformity with area-wide planning. CCC will provide technical assistance and will encourage producers to use the services of qualified personnel of cooperating Federal, State, or local agencies, or private entities who can provide technical assistance.

Paragraph (g) lists the components of a conservation plan. At the producer's request, the plan may also include other CCC and USDA programs, such as CRP, WRP, Wildlife Habitat Incentives Program, Forest Stewardship Program, and requirements relating to the highly erodible land and wetland conservation provisions of the 1985 Act. A producer may also include to the extent possible all other natural resource conservation objectives from State and local governments in a single conservation plan. Existing plans developed by natural resource professionals would not need to be replaced if the resource management objectives of EQIP are met and plans are not redundant.

Section 1466.7 describes eligible practices. Based on guidance provided by the Chief of NRCS, NRCS state conservationists, after consultation with State technical committees and local work groups, will determine which conservation practices should be eligible in the State. Designated conservationists will determine which conservation practices should be eligible in a priority area or for producers with significant statewide natural resource concerns. CCC will encourage the use of the most cost-effective conservation practices to solve natural resource problems and to encourage widespread adoption of measures that maximize environmental benefits per dollar expended. Practices whose primary purpose is to enhance productivity would not be eligible, nor would practices that the producer has already applied or that the producer is likely to apply without EQIP financial assistance.

Paragraph (a)(3) permits NRCS to approve interim conservation practice standards and financial assistance for pilot testing new technology or innovations. NRCS will involve other entities in the pilot testing, including extension and research agencies and institutions, conservation districts, universities, private industry, and others to evaluate and assess the practices.

Paragraph (b) specifies that large confined livestock operations are excluded from eligibility for cost-share payments to construct animal waste management facilities. As noted above, CCC particularly welcomes comments on how to define and implement this requirement of the 1996 Act. In the public listening forums that preceded this rulemaking, USDA received many comments regarding this topic, most of which advised USDA on the importance of making eligible various types of enterprises. Few commenters provided suggestions on the number of livestock head that should be considered ''large'' for purposes of this rule, or provided other suggestions on formulas or other criteria to substitute for a specific number. CCC invites comment on making this definition more specific or more equitable in the context of the law.

Section 1466.8 addresses the sources of technical assistance to carry out EQIP. CCC will use technical and other assistance from other qualified Federal, State, and local agencies and will encourage producers to also use the private sector to carry out the program. As determined by the State conservationist, CCC may contract with private enterprises or enter cooperative agreements with other Federal, State, or local entities for services related to EQIP implementation. The vice president of CCC, who is the Chief of NRCS, retains the responsibility for ensuring that technical program standards are met.

Subpart B addresses administration of EQIP contracts.

Section 1466.20 addresses applications for contracts and selecting offers from producers. CCC will accept applications for EQIP throughout the year but will rank the applications and select the participants periodically as determined at the local and/or State level. CCC will announce in advance the period to begin evaluation and ranking of applications.

Before evaluating individual applications, the local work group will develop ranking criteria to prioritize producer's applications. NRCS State staff provides oversight for consistency of ranking criteria. The NRCS designated conservationist and FSA county executive director will assist the FSA county committee with applying the criteria. The FSA county committee,

with concurrence of NRCS, will approve applications based on the developed criteria. Each application will be ranked according to the criteria.

The producer's application will include any structural, vegetative, and land management practices proposed under the contract. CCC will evaluate applications based on future environmental benefits which are expected with the contract and the program payments. CCC will give additional consideration if the contract will assist the producer in complying with environmental laws.

Section 1466.21 addresses the requirements for EQIP contracts. Only the land that meets the purpose and goals of the program and is to be treated under EQIP will be included in the contract, and no tract will have more than one EQIP contract at a time.

Section 1466.22 addresses the participant's responsibility for conservation practice operation and maintenance.

Section 1466.23 addresses rates for cost-share and incentive payments. Subject to the national direct Federal funding cap of 75 percent of the projected cost of a structural or vegetative practice, State conservationists, with FSA State committee concurrence and the advice of local work groups and the State technical committee, can set cost-share rates and incentive payment limits as determined appropriate to encourage a producer to perform the land management practice that would not otherwise be initiated without such assistance.

Paragraph (b) of this section addresses payment limitations.

Section 1466.25 addresses the procedures to be followed for contract violations and terminations.

Subpart C describes administrative remedies available to participants, such as appeal rights and provisions for relief if a participant relies on advice or action of a CCC representative. It also addresses the responsibilities of the participant in obtaining necessary easements and complying with other laws and regulations and in providing USDA representatives access to land to verify compliance with the terms and conditions of a contract.

List of Subjects in 7 CFR part 1466

Administrative practices and procedures, Conservation, Natural Resources, Water Resources, Wetlands, Payment rates.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1466 to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 Program requirements.
1466.5 Priority areas and significant statewide natural resource concerns.
1466.6 Conservation plan.
1466.7 Conservation practices.
1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share and incentive payments.
1466.24 Contract modifications and transfers of land.
1466.25 Contract violations and termination.

Subpart C—Administrative Remedies

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of CCC.

Authority: 16 U.S.C. 3839aa–3839aa–8.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (CCC) provides technical, educational, and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resources concerns on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved through the implementation of structural and land management practices on eligible land.

§ 1466.2 Administration.

(a) Administration of EQIP is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

(1) Provide overall program management and implementation leadership for EQIP;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of priority areas;

(3) Establish cost-share and incentive payment limits;

(4) Determine eligibility of practices;

(5) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance; and

(6) Make funding decisions and determine allocations of program funds.

(c) FSA shall:

(1) Be responsible for the administrative processes and procedures for applications, contracting, and financial matters, including allocation and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA shall concur in establishing policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

(f) CCC may enter into cooperative agreements with other Federal agencies, State agencies, conservation districts, units of local government, and public and private not for profit organizations to assist CCC with implementation of this part.

§ 1466.3 Definitions.

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

Administrator means the Administrator of the FSA, United States Department of Agriculture (USDA), or designee.

Agricultural land means an area on which crops or livestock are produced.

Animal waste management facility means a structural practice used for the storage or treatment of animal waste.

Applicant means a producer who has requested in writing to participate in EQIP. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, USDA, or designee.

Confined livestock operation means a livestock facility that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth, or post-harvest residues within the confined area in the normal growing season over any portion of the confinement facility.

Conservation district means a political subdivision of a State, Native American

Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation management system (CMS) means any combination of conservation practices and management practices that, if applied, will protect or improve the soil, water, or related natural resources.

Conservation plan means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications as a part of a CMS.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Designated conservationist means a NRCS employee whom the State conservationist has designated as responsible for administration of EQIP. In the case of a priority area or other area that crosses State borders, the Chief or the Chief's designee will designate the NRCS official responsible for administration of EQIP in the priority area.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Farm Service Agency State committee means a committee in a State or the Caribbean Area (Puerto Rico and the Virgin Islands) appointed by the Secretary in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

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

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

Life span means the period of time specified in the contract or conservation plan during which the conservation management systems or component conservation practices are to be maintained and used for the intended purpose.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State conservationist identifies in consultation with the State technical committee.

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

Livestock-related natural resource concern means any environmental condition, either on-site or off-site, that is directly related to livestock activity or to livestock manure or waste.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who consult with NRCS on decisions related to EQIP implementation.

National conservation priority area means a watershed, multi-state area, or region of specific environmental sensitivity designated by the Chief.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

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

Priority area means a watershed, area, or region that is designated under this part because of specific environmental sensitivities or significant soil, water, or related natural resource concerns.

Private agribusiness sector means agricultural producers, certified crop advisors, professional crop consultants that are certified or certified and independent, agricultural cooperatives, integrated pest management coordinators and scouts, and other technical consultants.

Producer means a person who is engaged in livestock or agricultural production.

Regional conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a NRCS region.

Resource management system means a conservation management system that, when implemented, achieves sustainable use of the soil, water, and related natural resources.

Secretary means the Secretary of the United States Department of Agriculture.

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

State executive director means the FSA employee authorized to direct and supervise FSA activities in a State or the Caribbean Area (Puerto Rico and the Virgin Islands).

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

Structural practice means a conservation practice which primarily involves the establishment, construction, or installation of a site-specific measure to conserve, protect from degradation, or improve soil, water, 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, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

Vegetative practice means a conservation practice which primarily involves the establishment or planting of a site-specific vegetative measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, contour grass strips, filterstrips, critical area plantings, and permanent wildlife habitat.

§ 1466.4 Program requirements.

(a) Program participation is voluntary. The participant, in cooperation with the local conservation district, develops a conservation plan for the farm or ranching unit of concern. The participant's conservation plan serves as the basis for the EQIP contract. CCC provides cost-share or incentive payments to apply needed conservation practices and land use adjustments within a time schedule specified by the conservation plan.

(b) The Chief determines the funds available to NRCS for technical assistance according to the purpose and projected cost for which the technical assistance is provided by NRCS or designee in a fiscal year. The Chief allocates an amount according to the type of expertise required, the quantity of time involved, the timeliness required, the technology needed, and other factors as determined appropriate by the Chief. Funding shall not exceed the projected cost to NRCS of the technical assistance provided in a fiscal year.

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

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control and the lack of current control for the full contract period is beyond the control of the participant;

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall obtain the concurrence of the landowner in order to apply a structural or vegetative practice.

(3) Submit a conservation plan that is acceptable to NRCS and is approved by the conservation district and is in compliance with the terms and conditions of the program; and

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.

(d) Land used as cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types; terrain; climate; soil, topographic, flood, or saline characteristics; or other factors or natural hazards, including the existing agricultural management practices of the applicant, may be eligible for enrollment in EQIP. Land may only be considered for enrollment in EQIP if NRCS determines that the land is:

(1) Privately owned land; or

(2) Publicly owned land where:

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

(ii) Installation of conservation practices will not primarily benefit the government landowner;

(iii) Conservation practices will benefit nearby natural resources; and

(iv) The participant has written authorization from the government landowner to apply the conservation practices.

§ 1466.5 Priority areas and significant statewide natural resource concerns.

(a) Consistent with maximizing the overall environmental benefits per dollar expended by the program, NRCS may designate a watershed, an area, or a region of special environmental sensitivity or having significant soil, water, or related natural resource concern as a priority area. NRCS shall give special consideration to applicants in priority areas who have conservation plans that address the natural resource concern(s) for which the priority area was designated.

(b) CCC may approve technical, educational, and financial assistance under this part to participants with significant statewide natural resource concerns outside a priority area.

(c) To be considered for approval of a priority area, a Federal, State, or local government agency, working cooperatively with a respective local work group and State technical committee, shall make a proposal to CCC in the form of a priority area assessment. The priority area assessment shall include:

(1) A description, quantified when possible, of the nature and extent of natural resource concerns in the assessment area;

(2) A description, quantified when possible, of how the proposed goals, objectives, and solutions for the natural resource problems would maximize the environmental benefits that would be delivered with the requested Federal dollars, both within the priority area and as part of the overall program provided under this part;

(3) Background information such as science-based data on environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns in the priority area or the appropriateness of the proposed solution to those natural resource concerns.

(4) The existing staff and incentive programs available at the Federal, State, and local levels, both public and private, to assist with the areawide activities;

(5) The technical, educational, and financial assistance needed from EQIP to help meet the areawide goals and objectives;

(6) Ways to measure performance and success, quantified where possible; and

(7) An explanation, quantified where possible, of the degree of difficulty producers face in complying with environmental laws.

(d)(1) NRCS State conservationists will base their decisions to designate an area as a priority area upon a priority area assessment, the significance of the natural resource concern(s) in the proposed priority area, and the conservation practices that best address the identified concern(s). NRCS shall consider the following factors in determining the significance of the natural resource concern:

(i) Soil types and characteristics;

(ii) Terrain and topographic features;

(iii) Climatic conditions;

(iv) Flood hazards;

(v) Saline characteristics;

(vi) Environmental sensitivity of the land, such as wetlands and riparian areas;

(vii) Quality and intended use of the land;

(viii) Quality and intended use of the receiving waters, including fishery habitat;

(ix) Wildlife and wildlife habitat quality and quantity;

(x) Quality of the air; or

(xi) Other natural hazards or factors, including the existing agricultural management practices of the producers in the area; and

(xii) The economic significance of these factors.

(2) NRCS will consider the following factors in its allocation of funds:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of support from existing State and local programs;

(vii) Ways the program can best assist producers in complying with Federal and State environmental laws, quantified where possible; and

(viii) Other factors the NRCS determines will result in maximization of environmental benefits.

(3) A NRCS State conservationist, in consultation with a State technical committee and based on recommendations of a local work group, may approve an area as a priority area.

(e) A NRCS State conservationist, in consultation with a State technical committee and based on recommendations of a local work group, may approve program assistance to participants with significant statewide natural resource concerns outside a funded priority area.

(f)(1) The Chief may designate national conservation priority areas using the identified national program objectives and criteria. The Chief may consult with other Federal agencies in selecting national conservation priority areas. Consistent with maximizing the overall environmental benefits per dollar expended by the program, the Chief may designate national conservation priority areas under this part to provide technical assistance, cost-share payments, incentive payments, and education for producers to comply with nonpoint source pollution requirements, other Federal, State, or local environmental laws, or to meet other conservation needs.

(2) NRCS will develop criteria to select the national conservation priority areas where program assistance will be provided. The criteria will consider:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of support from existing State and local programs;

(vii) Ways the program can best assist producers in complying with Federal and State environmental laws, quantified where possible;

(viii) The ability to coordinate EQIP with the Conservation Reserve Program, Wetland Reserve Program, or other programs in common areas to further maximize the environmental benefits per dollar expended in each program; and

(ix) Other factors that will assist CCC in maximizing the overall environmental benefit per dollar expended under this part.

(g) The Chief, with FSA concurrence, will make funding decisions for national conservation priority areas, State-approved priority areas, and significant statewide natural resource concerns outside a funded priority area. The Chief may base funding decisions, after a review of priority area assessments, using the criteria developed in accordance with paragraphs (d) and (f) of this section, and considering other relevant information. The approval of a priority area at the State level does not necessarily mean that funds will be allocated to that area. Proposals that are not funded may be resubmitted to the Chief for subsequent review and consideration to determine if the resubmitted proposal meets Federal priorities for funding.

§ 1466.6 Conservation plan.

(a) The participant shall develop and submit a conservation plan for the unit of concern that, when implemented, protects the soil, water, or related natural resources in a manner that meets the purpose of the program and is acceptable to NRCS and is approved by the conservation district. This plan forms the basis for an EQIP contract.

(1) When considering the acceptability of the plan, NRCS will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended.

(2) As determined by NRCS, the conservation plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide, for the priority natural resource condition of concern in the priority area or the significant statewide natural resource concern outside a funded priority area.

(b) Upon a participant's request, the NRCS may provide technical assistance to a participant. NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies, or private agribusiness sector or organizations, in performing its responsibilities for technical assistance. Participants may, at their own cost, use qualified professionals to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining EQIP contract compliance.

(c) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this part.

(d) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS field office technical guide.

(e) The conservation plan, or supporting documentation, for the unit of concern shall include:

(1) A description of the prevailing farm or ranch enterprises and operations that may be relevant to conserving and enhancing soil, water, or related natural resources;

(2) A description of relevant natural resources, including soil types and characteristics, rangeland types and conditions, proximity to water bodies, wildlife habitat, or other relevant characteristics related to the conservation and environmental objectives of the plan;

(3) A description of specific conservation and environmental objectives to be achieved;

(4) To the extent practicable, the quantitative or qualitative goals for achieving the conservation and environmental objectives;

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

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

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

(f) To simplify the conservation planning process for the participant, the conservation plan may be developed, at the request of the participant, as a single plan that incorporates, to the extent

possible, any or all other Federal, State, or local government program requirements. Participants do not need to replace existing plans developed by natural resource professionals if such plans meet the resource management objectives under this part. NRCS may accept an existing conservation plan developed and required for participation in any other USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the EQIP contract.

§ 1466.7 Conservation practices.

(a)(1) The NRCS, with FSA consultation, shall provide guidance for determining eligible structural, vegetative, and land management practices. To be considered as an eligible practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve soil, water, or related natural resources or to provide for environmental enhancement.

(2) The designated conservationist, in consultation with the State technical committee or local work group, shall determine the eligible conservation practices for the priority area or for significant statewide natural resource concerns outside a priority area.

(3) Where new technologies or conservation practices that provide a high potential for maximizing the environmental benefits per dollar expended have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices at maximizing environmental benefits per dollars expended. NRCS may involve other entities in the pilot testing, including conservation districts, extension and research agencies and institutions, private agribusiness sector, and others.

(b)(1) CCC shall not provide cost-share assistance to construct an animal waste management facility on a large confined livestock operation. CCC may fund other structural, vegetative, or land management practices needed in the conservation management system to address the livestock-related natural resource concerns on a large confined livestock operation.

(2) The NRCS State conservationist, in consultation with the State technical committee, shall develop criteria to use to define a large confined livestock operation. The criteria will consider but not be limited to such factors as:

(i) The cost-effectiveness of the application and its potential to maximize environmental benefits per dollar expended;

(ii) The ability of producers to pay for the cost of animal waste management facilities;

(iii) The significance of the natural resource concern resulting from the operation;

(iv) Regulations promulgated pursuant to the Clean Water Act (33 U.S.C. 1251 *et seq.*) and guidance developed under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b);

(v) The obligations of operations under other environmental authorities;

(vi) The particular characteristics of modern livestock operations;

(vii) Other Federal and State environmental laws, and laws affecting the structure of agriculture; and

(viii) The size of the operation in relation to other confined livestock operations in the State or Nation.

(3) The NRCS State conservationist, in consultation with the State technical committee, shall place focus on paragraphs (b)(2)(i) and (b)(2)(ii) of this section when developing the criteria to define a large confined livestock operation.

§ 1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) A NRCS State conservationist may utilize technical and other assistance from qualified personnel of other Federal, State, and local agencies, and will encourage producers to use the most cost-effective technical assistance available, including if appropriate, using the services of the private agribusiness sector to carry out the assigned responsibilities of the program.

(b) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS shall provide technical coordination and leadership for the program, regardless of who provides technical and other assistance, and shall assure that the quality of the assistance obtained from other Federal, State, and local agencies, and the private agribusiness sector is acceptable for purposes of this part. Non-NRCS assistance shall not be deemed to satisfy an EQIP contract entered into under subpart B of this part until the assistance has been approved by NRCS.

Subpart B—Contracts

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP to a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) CCC will accept applications throughout the year. NRCS shall rank and select the offers of applicants periodically, as determined appropriate by NRCS after consultation with the State technical committee and on the recommendation of the local work groups.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a priority area. NRCS shall prioritize applications from the same EQIP-funded priority area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and the FSA county executive director, shall approve for funding the applications in a priority area based on eligibility factors of the applicant and the NRCS ranking.

(d) The NRCS State conservationist, in consultation with the State technical committee, and using quality criteria in the NRCS field office technical guide, will develop criteria to prioritize applications from applicants with significant statewide natural resource concerns outside a priority area. The FSA county committee, with assistance of the designated conservationist and FSA county executive director, shall approve for funding these applications based on the eligibility factors of the applicant and the NRCS ranking.

(e) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. A participant has the option of offering and accepting less than the maximum program payments allowed.

(f) NRCS will rank all applications using criteria that will consider:

(1) The environmental benefits per dollar expended;

(2) A reasonable estimate of the cost of the conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications will present the least cost to the program;

(3) The environmental benefits that will be derived by applying the

conservation practices in the conservation plan which will meet the purposes of the program;

(4) The extent to which the contract will assist the applicant in complying with Federal, State, or local environmental laws;

(5) Whether the land in the application is located in a priority area and the extent to which the contract will assist the priority area goals and objectives.

(g) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant shall enter into a contract agreeing to implement a conservation plan or portions thereof. FSA shall determine the eligibility of participants. The FSA county committee may only approve the contract, with NRCS concurrence.

(b) An EQIP contract shall:

(1) Incorporate all portions of a conservation plan applicable to EQIP;

(2) Be for a duration of not less than 5 years nor more than 10 years;

(3) Include all provisions as required by law or statute;

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

(5) Include participant reporting requirements to determine compliance with the contract and program; and

(6) Any other provision determined necessary or appropriate by CCC.

(c) The participant must apply a financially assisted practice within the first 12 months of signing a contract. If the participant does not apply a financially assisted practice within the first 12 months, CCC may determine that the contract has been breached, terminate the contract, and seek appropriate remedies.

(d) There is a limit of one EQIP contract at any one time for each tract of agricultural land, as identified with a FSA tract number, determined at the time of the application for EQIP assistance. Subject to the payment limitation set out elsewhere in this part, a participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous EQIP contract on the same tract.

§ 1466.22 Conservation practice operation and maintenance.

The contract shall incorporate the operation and maintenance of conservation practices applied under the contract. The participant shall operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by CCC. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract.

§ 1466.23 Cost-share and incentive payments.

(a)(1) The maximum direct Federal share of cost-share payments to a participant shall not be more than 75 percent of the projected cost of a structural or vegetative practice.

(2) CCC shall provide incentive payments to participants for land management practices in an amount and at a rate necessary to encourage a participant to perform the land management practice that would not otherwise be initiated without government assistance.

(3) CCC shall set the cost-share and incentive payment limits, as determined by:

(i) The designated conservationist, in consultation with the local work group, for a priority area; or

(ii) The NRCS State conservationist, in consultation with the State technical committee, for participants subject to environmental requirements or with significant statewide natural resource concerns outside a funded priority area.

(b) Except as provided in paragraph (c) of this section, the total amount of cost-share and incentive payments paid to a person under this part may not exceed:

(1) $10,000 for any fiscal year; and

(2) $50,000 for any multi-year contract.

(c) CCC shall use the provisions in 7 CFR Part 1400 related to the definition of person and the limitation of payments, except that:

(1) States, political subdivisions, and entities thereof will not be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

(3)(i) The NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of $10,000 in any fiscal year, up to the $50,000 limitation in paragraph (b) of this section. However, such increase in payments for a certain year shall be offset by reductions in the payments in subsequent years. CCC will base approval for payments in excess of $10,000 in a fiscal year on the NRCS State conservationist's determination that the approval is justified because:

(A) The practices in the system need to be applied at once so that the system is fully functioning to resolve the natural resource problem;

(B) The natural resource problem is so severe that resolving the problem immediately is needed;

(C) The producer needs to complete the practices in one year so that the farming operation is not interrupted or disturbed by the practice installation over a 5–10 year period; or

(D) The producer can install the practices at a lower total cost when installed in one year, thereby reducing the program payments.

(ii) With respect to land under EQIP contract which is inherited in the second and subsequent years of the contract, the $10,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an EQIP contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies that no one ''person'' directly or indirectly will receive more than the limitation.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person eligible for payment.

(5) The status of an individual or entity on the date of application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(6) A participant shall not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same land under the Conservation Reserve Program (16 U.S.C. 3831–3836) or the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*).

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before the CCC will approve the payment of any cost-share or incentive payments.

(e) CCC expenditures under a contract entered into during a fiscal year shall not be made until the subsequent fiscal year.

§ 1466.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation plan is revised in accordance with NRCS requirements and is approved by the conservation district.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) CCC may require all or a portion of any assistance earned under EQIP to be refunded if a participant sells or loses control of the land under an EQIP contract and the new owner or controller refuses to assume responsibility under the contract.

§ 1466.25 Contract violations and termination.

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

(2) If the FSA county committee determines, in consultation with NRCS, that a participant has submitted false information or filed a false claim, the FSA county committee may terminate the EQIP contract.

(b)(1) If FSA terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received with interest. The FSA county committee, in consultation with NRCS, has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, are not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The FSA county committee, in consultation with NRCS, will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, CCC may, in addition, give consideration to good faith on the part of the participant and hardships that prevent the participant from complying with the contract terms that are beyond the participant's control, and make additional adjustments accordingly.

(4) The participant may voluntarily terminate a contract if CCC agrees based on CCC's determination that termination is in the public interest.

Subpart C—Administrative Remedies

§ 1466.30 Appeals.

(a) A participant in EQIP may obtain a review of a determination affecting participation in accordance with parts 11, 614, and 780 of this title, except as provided in (b), as appropriate.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of State-approved priority areas, national conservation priority areas, or significant statewide natural resource concerns;

(3) NRCS funding decisions to make allocations to States or priority areas;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

§ 1466.31 Compliance with regulatory measures.

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

§ 1466.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

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

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the Farm Service Agency county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

Thomas A. Weber,

Deputy Vice President, Commodity Credit Corporation.

[FR Doc. 96–26265 Filed 10–9–96; 10:45 am]

BILLING CODE 3410–16–P