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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

Environmental Quality Incentives Program; Conservation Innovation Grants

AGENCY: Natural Resources Conservation Service, Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: In this document, the Natural Resources Conservation Service (NRCS) affirms, with changes, the provisions of an interim final rule that added provisions regarding Conservation Innovation Grants (CIG) to the Environmental Quality Incentives Program (EQIP). The regulations implement statutory provisions designed to provide competitive grants to eligible Indian Tribes; State or local units of government; non-governmental organizations; and individuals. The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging the Federal investment in environmental enhancement and protection, in conjunction with agricultural production.

DATES: *Effective date:* January 11, 2005.

FOR FURTHER INFORMATION CONTACT: Kari Cohen, Natural Resources Conservation Service, 14th and Independence Avenue SW., Room 5239–S, Washington, DC 20250. Phone: (202) 720–2335; facsimile: (202) 720–4265. Send e-mail to: *kari.cohen@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720–2600.

SUPPLEMENTARY INFORMATION: In this document, the Natural Resources Conservation Service (NRCS) affirms, with changes, the provisions of an interim final rule that was published in the **Federal Register** on March 29, 2004 (69 FR 16392). The interim final rule added provisions regarding Conservation Innovation Grants (CIG) to the regulations for the administration of the Environmental Quality Incentives Program (EQIP). The added regulations implement statutory provisions designed to provide competitive grants to eligible Indian Tribes; State or local units of government; non-governmental organizations; and individuals to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging the Federal investment in environmental enhancement and protection, in conjunction with agricultural production.

The interim final rule provided a 60-day public comment period that closed on May 28, 2004. NRCS received seven submissions that raised issues discussed below. Based on the rationale set forth in the interim final rule and this document, NRCS adopts as a final rule the provisions of the interim final rule that appeared in the **Federal Register** on March 29, 2004, except the NRCS makes a few modifications to those provisions and describes those changes below. You may access this final rule via the Internet through the NRCS home page at *http://www.nrcs.usda.gov*. Select ''Farm Bill.''

CIG Program

Of the nearly 1.4 billion acres of private land in the United States, 931 million acres, or roughly 70 percent, are in agricultural use. The activities on these lands have a direct effect on soil, water, air, plant, and animal resources, as well as the social, cultural, and economic condition of U.S. communities, towns, and counties. Regional and local differences in farm structure, farm practices, and farm products make delivering innovative agricultural conservation technical assistance a challenge. National agricultural research and development may not always have the capacity to develop, test, and transfer new or innovative conservation technologies and approaches rapidly or effectively to account for regional variances in the agricultural industry. Consequently, there is a need to develop, test, implement, and transfer innovative farm and ranch conservation technologies and approaches for adoption in the largest applicable market.

To address this need, Section 1240H of the Food Security Act of 1985, 16 U.S.C. 3839aa–8, was added by section 2301 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), and established CIG as part of EQIP. Through CIG, the Secretary of Agriculture may pay the costs of competitive grants to carry out projects that stimulate innovative approaches to leveraging the Federal investment in environmental enhancement and protection in conjunction with agricultural production.

The Secretary of Agriculture delegated the authority for the administration of EQIP, including CIG, to the Chief of NRCS, who is a vice president of the Commodity Credit Corporation (CCC). EQIP is administered using the funds, facilities, and authorities of the CCC.

CIG is administered using a two-tiered approach. Grants may be awarded through both National and State-level competitions. Funding availability for the CIG National component will be announced in the **Federal Register** through a Request for Proposals (RFP). In addition, the Chief may provide each NRCS State Conservationist with the discretion to implement a separate State-level component of CIG.

The Chief will determine the funding level for the National component on an annual basis. CIG funds for the National component will be designated from the National EQIP allocation. Funding availability for State-level competitions will be announced through public notices, separately from the National program. Applications will be solicited from eligible governmental and non-governmental organizations and individuals for single or multi-year projects.

Comments

Project Eligibility

The provisions of § 1466.27(b)(4) state that ''Technologies and approaches that are eligible for funding in the project's geographic area through EQIP are not eligible for CIG funding.'' Commenters expressed concern that this sentence would be broadly interpreted to exclude

innovation associated with established technologies and approaches. This was not intended. Therefore, NRCS changed paragraph (b)(4) to clarify that the quoted provisions do not prohibit funding of technologies and approaches that are similar to established technologies and approaches as long as the project includes significant innovative differences.

With respect to project eligibility, the interim final rule stated that all agricultural producers participating in a CIG project must meet the basic eligibility requirements for EQIP. This was not intended to impose the eligibility requirements on individuals or entities not receiving direct or indirect payments, such as an organization locating an innovative technology on a producer's property without providing a payment. Accordingly, we clarified the regulations to state that all agricultural producers receiving a direct or indirect payment through participation in a CIG project must meet the eligibility requirements.

One commenter urged NRCS to ensure that CIG-funded projects would include a broad spectrum of agricultural operations, large and small, crop and livestock, etc. One commenter expressed concern that the language in the interim final rule favored grant applications from individuals over applications from non-profit organizations and units of government. NRCS made no changes based on these comments. Consistent with the statutory authority at 16 U.S.C. 3844, the CIG rule contains special provisions for limited resource farmers or ranchers that would constitute a small portion of CIG grant awards. Otherwise, the National and State-level competitions under CIG are designed to minimize any bias in favor of a class of applicants.

One commenter urged NRCS to set aside CIG funds for Latina women farmers and ranchers. NRCS made no changes based on this comment. NRCS has no authority to make awards based on gender or race.

Identification of Natural Resource Concerns

Under the provisions of § 1466.27(d), CIG applications must address natural resource conservation concerns that are identified by the Chief of NRCS and published in the RFP. Also, under the provisions of § 1466.27(d), the natural resource concerns may change each year. The RFP for FY 2004 identified five resource concerns with more specific subtopics. One commenter asserted that this listing of natural resource concerns is too broad, and that only two or three natural resource priorities should be identified each year. Additionally, a number of commenters made suggestions as to what natural resource concerns should be identified in the RFP. NRCS made no changes based on these comments. As explained in the preamble to the interim final rule, NRCS has designed a protocol for soliciting input on which natural resource concerns should be identified in an RFP. NRCS will consider the suggestions of commenters when compiling the natural resource concerns to be listed in the next RFP. The number and scope of the natural resource concerns will be based on the funding available to meet the needs identified by interested stakeholders.

Funding

For CIG, NRCS established two types of grants for funding projects, one awarded at the National level and one awarded at the State level. For FY 2004, the Chief established a maximum funding limit of $1 million per project for the National competition. Also, under § 1466.27(h)(3), the maximum funding limit per project awarded at the State-level competition may not exceed $75,000.

The provisions of § 1466.27(c) state that the Chief of NRCS (or his or her designee) will determine the funding level for the National component of CIG on an annual basis from the total funding available for EQIP. One commenter recommended that these provisions be changed to provide that National CIG funding be a set percentage of EQIP, such as10 percent. One commenter recommended that NRCS State Conservationists be allowed to designate up to 10 percent of their EQIP allocation for the State component of CIG. Another commenter recommended that the funding for CIG be a minimum of $50 million annually. NRCS made no changes based on these comments. As stated in the preamble to the interim final rule, provisions regarding the funding level for CIG provide the decision maker ''with maximum flexibility to adjust to changing levels of available funds and program conditions'' (69 FR 16394).

With respect to the National competition, one commenter asserted that the $1 million project cap was adequate and another commenter asserted the $1 million project cap would be insufficient for large trading programs. NRCS made no changes based on these comments. Funding limits for the National competition will be announced in each RFP based on overall EQIP funding.

With respect to the State-level competition, one commenter recommended that NRCS raise the cap from $75,000 to $450,000. NRCS made no changes based on this comment. The State-level competition was designed to target CIG funds to individual producers and smaller organizations that would have difficulty generating the 50 percent required match for large awards. NRCS also believes that there should be some distinction between the National and State competitions. Proposals larger in scope and funding should be submitted to the National competition. Smaller proposals should be submitted at the State level.

One commenter suggested that instead of utilizing all available CIG funds on natural resource concerns identified in the RFP, NRCS should reserve a portion of the funds for exceptional applications that address natural resource concerns not identified in the RFP. NRCS made no changes based on this comment. The adoption of this suggestion would place undue emphasis on funding approaches or technologies that would not address the most critical natural resource concerns.

Ranking

The interim final rule provides for applications to be evaluated and ranked by a peer review panel. The interim final rule then provides for the proposal rankings to be forwarded to the Grant Review Board to make funding recommendations to the Chief. The interim final rule further provides that the peer review panel will consist of Federal and non-Federal technical advisers who posses specified qualifications and that the Grant Review Board will consist of five NRCS officials. One commenter recommended that NRCS expand the Grant Review Board to include at least two members outside of government agencies. NRCS made no changes based on this comment. NRCS has been delegated authority to administer the CIG program and believes that the members of the Grant Review Board have sufficient expertise to make funding recommendations to the Chief.

One respondent recommended that NRCS provide greater weight to projects that address multiple natural resource concerns. NRCS made no changes based on this comment. Grants for CIG should be awarded based on the quality of the proposal and not on the number of natural resources concerns addressed.

Evaluating Performance

One commenter asserted that for grants exceeding $250,000, the grantee should be required to establish a

monitoring plan with up to 5% or the total grant amount reserved for evaluating performance. The commenter also asserted that for grants of lower amounts, NRCS should provide simple on-line tools for evaluating performance. We made no changes based on these comments. The CIG program already has provisions for evaluating performance. As stated in the ''Notice of request for proposals,'' an application for CIG must ''Describe the methodology or procedures to be followed to evaluate the project, determine the technical feasibility, and quantify the results of the project for the final report (69 FR 16403).'' The notice further states that ''Grant recipients will be required to provide a quarterly report of progress and a final project report to NRCS (69 FR 16403).'' These provisions do not require the grantee to set aside a specific percentage of the grant award, but do require the grantee to allocate sufficient resources to evaluate project results.

Effective Date

This document makes non-substantive changes and makes changes that lessen restrictions. Accordingly, this document is made effective on publication in the **Federal Register**.

Executive Order 12866

The CIG program was authorized as part of EQIP, with an unspecified annual funding level from FY2003 through FY2007. This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this interim final rule is not a significant rulemaking action. Therefore, completion of a benefit-cost assessment of potential impacts is not necessary. An economic evaluation was completed, however, because of the aid that such an evaluation provides to the rulemaking process. A copy of this document is available upon request from: Kari Cohen, Natural Resources Conservation Service, 14th and Independence Avenue SW., Room 5239-S, Washington, DC 20250. Phone: (202) 720–2335; facsimile: (202) 720–4265.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS 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 Evaluation

Promulgation of this rule does not authorize any activities that will affect the human environment. This rule establishes the policies and procedures that will be used to award Conservation Innovation Grants. The grants awarded under this rule are for innovative projects; therefore, NRCS has a limited ability to predict the types of actions that may be carried out during a CIG project. Any attempt to analyze the effects of proposed actions would be speculative. Accordingly, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared at this time. Instead, the environmental effects of each CIG proposal will be evaluated on a case-by-case. As a part of the evaluation, CIG applicants are required to submit an environmental profile as part of their application. These profiles will be used to determine whether an EA or EIS is needed for any given project, prior to the awarding of grant funds.

Paperwork Reduction Act

Section 2702(b)(1)(A) of the 2002 Act provides that the promulgation of rules and the administration of title II of the Act shall be made without regard to chapter 35 of title 44 of the United States Code, the Paperwork Reduction Act. Accordingly, these rules and the forms, and other information collection activities needed to administer the program authorized by this rule, are not subject to provisions of the Paperwork Reduction Act, including review by the Office of Management and Budget.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and with the Freedom to E-File Act, which require Government agencies in general, and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12998

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent that such laws are inconsistent with this 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 Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 104–354), NRCS did not classify this rule as major and, therefore, NRCS did not conduct a risk analysis. A risk analysis was completed on the EQIP program, establishing that EQIP will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the EQIP risk analysis is available on request from Harry Slawter, Environmental Improvement Programs Branch Chief, Natural Resources Conservation Service, 14th and Independence Avenue, SW., Room 5239–S, Washington, DC 20250, and electronically at *http://www.nrcs.usda.gov/programs/Env_Assess/EQIP/EQIP_RA_121002.pdf*.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on local, State, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any local, State, 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.

List of Subjects in 7 CFR Part 1466

Conservation, Grant Review Board, Grants, Innovation, Natural Resources, Peer Review Panel.

■ For the reasons stated in the preamble, the Commodity Credit Corporation adopts as final the interim rule published at 69 FR 16392 on March 29, 2004, with the following changes:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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

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

■ 2. In § 1466.27, paragraphs (b)(4) and (e)(2) are revised to read as follows:

§ 1466.27 Conservation Innovation Grants (CIG).

* * * * *

(b) * * *

(4) *Program focus.* Applications for CIG should demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund

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

* * * * *

(e) * * *

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

* * * * *

Signed in Washington, DC, on January 3, 2005.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 05–511 Filed 1–10–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA26

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, Office of the Chief Economist, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is establishing guidelines for designating items made from biobased products that will be afforded Federal procurement preference, as required under section 9002 of the Farm Security and Rural Investment Act of 2002.

DATES: This rule is effective February 10, 2005.

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 361, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024; e-mail: *mduncan@oce.usda.gov*; telephone (202) 401–0532. Information regarding the Federal Biobased Products Preferred Procurement Program is available on the Internet at *http://www.biobased.oce.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

These guidelines are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Overview of Section 9002

Section 9002 provides for preferred procurement of biobased products by Federal agencies. Federal agencies are required to purchase biobased products, as defined in regulations to implement the statute (i.e., this final rule), for all biobased products within designated items costing over $10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procurements by a Federal agency subject to section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) are not subject to the requirements under section 9002 to the extent that the requirements of the two programs are inconsistent. Federal agencies must procure biobased products unless the biobased products within designated items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The Office of Federal Procurement Policy (OFPP) and the USDA will work in cooperation to ensure implementation of the requirements of section 9002 in the Federal Acquisition Regulation (FAR). In this document, USDA is establishing guidelines addressing the designation process, how to determine the biobased content and other attributes of specific products, and cost sharing for product testing. In addition, to provide context, these guidelines address, but do not specifically implement, the procurement specific aspects of section 9002. USDA consulted with the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Commerce's National Institute of Standards and Technology (NIST) in preparing the proposed guidelines that it is finalizing in this rule.

To provide context, these guidelines include the statutory requirement that Federal agencies have in place, within one year of the publication of final guidelines, a procurement program that assures biobased products within designated items will be purchased to the maximum extent practical. Those procurement programs will have to contain a preference program for purchasing biobased products within designated items, an agency promotion program, and provisions for the annual review and monitoring of an agency's procurement program. In addition to establishing a preferred procurement program, as items are designated, Federal agencies may need time to adjust procurement practices. In accordance with section 9002(c) and (d), designation rules will specify the time frames within which such adjustments must occur.

In designating items (generic groupings of specific products such as crankcase oils or synthetic fibers) for preferred procurement, USDA will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. Federal agencies will be required to purchase products that fall within an item only after that item has been designated for preferred procurement. In addition, USDA will provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, where appropriate, will recommend the level of biobased content to be contained in the procured product. Manufacturers and vendors will be able to offer their products to Federal agencies for preferred procurement under the program when their products fall within the definition of an item that has been designated for preferred procurement and the biobased content of the products meets the standards set forth in the guidelines.

Section 9002 provides that USDA, in consultation with the Administrator of the EPA, shall establish a voluntary program authorizing producers of biobased products to use a ''U.S.D.A. Certified Biobased Product'' label. In a subsequent rulemaking, USDA intends to establish that voluntary program and provide eligibility criteria and guidelines for the use of the ''U.S.D.A. Certified Biobased Product'' label.

Section 9002 provides funds to USDA to support the testing of biobased products to carry out the provisions of