

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.

- 1466.1 Applicability.
- 1466.2 Administration.
- 1466.3 Definitions.
- 1466.4 National priorities.
- 1466.5 National allocation and management.
- 1466.6 State allocation and management.
- 1466.7 Outreach activities.
- 1466.8 Program requirements.
- 1466.9 EQIP plan of operations.
- 1466.10 Conservation practices.
- 1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts and Payments

- 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 rates and incentive payment levels.
- 1466.24 EQIP payments.
- 1466.25 Contract modifications and transfers of land.
- 1466.26 Contract violations and termination.
- 1466.27 Conservation Innovation Grants (CIG).

Subpart C—General Administration

- 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 NRCS.
- 1466.34 Offsets and assignments.
- 1466.35 Misrepresentation and scheme or device.

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

SOURCE: 68 FR 32348, May 30, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Natural Resources Conservation Service (NRCS) provides assistance to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective

manner and to assist producers in complying with environmental regulations. The purposes of the program are achieved by implementing structural and land management conservation practices on eligible land.

§ 1466.2 Administration.

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

(b) NRCS and the Farm Service Agency (FSA) will consult, at the National level, in establishing policies, priorities, and guidelines related to the implementation of this part. FSA may continue to participate in EQIP through participation on State Technical Committees and Local Work Groups.

(c) NRCS supports "locally-led conservation" by using State Technical Committees at the state level and Local Work Groups at the county/parish level to advise NRCS on technical issues relating to the implementation of EQIP such as:

(1) Identification of priority natural resource concerns;

(2) Identification of which conservation practices should be eligible for financial assistance; and

(3) Establishment of cost-share rates and incentive payment levels.

(d) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS from determining any issues arising under this Part or from reversing or modifying any determination made under this Part.

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

§ 1466.3 Definitions.

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

Agricultural land means cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, constituting a cohesive management unit for agricultural purposes. An agricultural operation shall be regarded as located in the county in which the principle dwelling is situated, or if there is no dwelling thereon, it shall be regarded to be in the county in which the major portion of the land is located.

Animal waste management facility means a structural conservation practice used for storing or treating animal waste.

Applicant means an individual, entity or joint operation who has an interest in a farming operation, as defined in 7 CFR 1400.3, who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species as determined by the State Technical Committee to need direct intervention to halt its population decline.

Beginning Farmer or Rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and

(2) Will materially and substantially participate in the operation of the farm or ranch.

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

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

of the farm or ranch would be seriously impaired.

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

Comprehensive Nutrient Management Plan (CNMP) means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

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

Conservation Innovation Grants means competitive grants made under EQIP to individuals, governmental and non-governmental organizations to stimulate innovative methods to leverage Federal funds to implement EQIP to enhance and protect the environment in conjunction with agricultural production.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any individual or entity who has been accepted to participate in the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices as opposed to procurement contract.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing a structural conservation practice.

Cost-effectiveness refers to the least-cost practices or system that achieves the stated conservation objectives.

Designated Conservationist means a NRCS employee whom the State Conservationist has designated as responsible for administration of EQIP in a specific area.

Entity means those organizations as defined in 7 CFR 1400.3.

EQIP plan of operations means the identification, location and timing of conservation practices, both structural and land management, that the producer proposes to implement on eligible land in order to address the priority natural resource concerns and optimize environmental benefits.

Field office technical guide means the official local NRCS source of resource information and interpretations of 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.

Incentive payment means the financial assistance from NRCS to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is Federally recognized as eligible

for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government-owned land under Bureau of Indian Affairs jurisdiction.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 1400.3.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, 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 water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Lifespan means the period of time during which a conservation practice is to be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS), and

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

Liquidated damages means a sum of money stipulated in the EQIP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, buffalo, poultry, turkeys, swine, sheep, horses, goats, fish or other animals raised by aquaculture, or animals the State Conservationist identifies with the advice of the State Technical Committee.

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

Local Work Group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to EQIP implementation.

National measures mean measurable criteria identified by the Chief of NRCS, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the National Priorities and statutory requirements.

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

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 a producer who is a party to an EQIP contract.

Person has the same meaning as set out in 7 CFR 1400.3.

Priority natural resource concern(s) means an existing or pending degradation of natural resource condition(s) as identified locally by the State Conservationist or Designee with advice from the State Technical Committee and Local Work Groups.

Producer means an individual or entity 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.

Related natural resources means natural resources that are associated with soil and water, including air, plants, and animals and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Secretary means the Secretary of the U. S. Department of Agriculture.

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

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, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to: (1) Conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (2) training, certification, and quality assurance of professional conservationists; and (3) evaluation and assessment

Commodity Credit Corporation, USDA

§ 1466.5

of the producer's operation and maintenance needs.

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants or to NRCS.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals along with all other non-domesticated animals.

§ 1466.4 National Priorities.

(a) The following National priorities will be used in the implementation of EQIP:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with TMDLs where available as well as the reduction of groundwater contamination and the conservation of ground and surface water resources;

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

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

(4) Promotion of at-risk species habitat conservation.

(b) With the advice of other Federal agencies, NRCS will undertake periodic reviews of the National priorities and the effects of program delivery at the state and local level. The Chief intends to annually review the National priorities to adapt the program to address emerging resource issues. NRCS will:

(1) Use the National priorities to guide the allocation of EQIP funds to the State NRCS offices,

(2) Use the National priorities in conjunction with state and local priorities to assist with prioritization and selection of EQIP applications, and

(3) Periodically review and update the National priorities utilizing input from the public and affected stakeholders to ensure that the program continues to address national resource needs.

§ 1466.5 National Allocation and Management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the state and local level. In order to optimize the overall environmental benefits over the duration of the program, the Chief of NRCS will:

(a) Use an EQIP fund allocation formula that reflects National priorities and measures and that uses available natural resource and resource concerns data to distribute funds to the state level. This procedure will be updated periodically to reflect adjustments to National priorities and information about resource concerns and program performance. The data used in the allocation formula will be updated as it becomes available.

(b) Provide a performance incentive to NRCS in States that demonstrate a high level of program performance in implementing EQIP. Performance incentives shall consider factors such as strategically planning EQIP implementation, effectively addressing National priorities and measures and state and local resource concerns, the effectiveness of program delivery, the use of Technical Service Providers, and the number of contracts with Limited Resource Producers and Beginning Farmers. These funds will be made available annually from a reserve established at the National level when funds become available.

(c) Use NRCS's accountability system to establish state level EQIP performance goals and treatment objectives.

(d) Ensure that National, state and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, allocation of base and reserve funds, and program achievements is made available to the public.

(e) Consult with State Conservationists and other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with advice from the State Technical Committee and Local Work Groups, to determine how funds will be