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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1466

RIN: 0587-AA31

Environmental Quality Incentives Program

AGENCIES: Natural Resources Conservation Service and Commodity Credit Corporation

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule implements the provisions of Title II of the Farm Security and Rural Investment Act of 2002 relating to the Environmental Quality Incentives Program. The Natural Resources Conservation Service (NRCS) proposes to revise and update the rule for the Environmental Quality Incentives Program (EQIP). This proposed rule describes how the NRCS intends to implement EQIP as authorized by amendments in the 2002 Act.

DATES: Comments must be received by **[Insert date that is 30 days after date of publication]**.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, U. S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), 1400 Independence Avenue SW, Room 5241, Washington, DC 20250-2890. Phone: (202) 720-1845; e-mail: mark.berkland@usda.gov. This proposal may also be accessed, and comments submitted, via Internet. Users can access the NRCS homepage to submit comments to FarmBillRules@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 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of Program

The Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Public Law 107-171, May 13, 2002) re-authorized and amended the Environmental Quality Incentives Program, which had been added to the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 et seq.) by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104-127). The 2002 Act also amended the Environmental Conservation Acreage Reserve Program by changing the section name to the Comprehensive Conservation Enhancement Program and removing the authority for the Secretary of Agriculture to designate areas as conservation priority areas.

As provided by section 1241 of the 1985 Act (16 U.S.C. 3841), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. (The Chief of the NRCS is a vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

Through EQIP, NRCS provides assistance to farmers and ranchers who face threats to soil, water, air, and related natural resources on their land. These include grazing lands, wetlands, private non-industrial forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, NRCS will provide assistance in a manner that will promote agricultural production and environmental quality as compatible goals, optimize environmental benefits, and help farmers and ranchers meet Federal, State, and local environmental requirements. NRCS will offer the program throughout the Nation using the services of NRCS and technical service providers. NRCS will implement a consolidated and simplified process to reduce any administrative burdens that would otherwise be placed on producers.

In this rule, NRCS proposes to incorporate changes in the EQIP regulations, 7 CFR 1466, resulting from the passage of the 2002 Act. Several important changes were made in the 2002 Act that require changes to the regulation. These include:

- (1) Changing the maximum payment limitation from \$50,000 per person per contract to \$450,000 per individual or entity for all contracts entered into in fiscal years 2002 through 2007;
- (2) Revising the purpose from maximize environmental benefits per dollar expended to optimize environmental benefits ;
- (3) Eliminating the competitive bidding by applicants;
- (4) Allowing payments to be made in the first year of the contract;
- (5) Removing language authorizing targeting of funds to Conservation Priority Areas;
- (6) Removing the provision prohibiting a producer from receiving cost-shares for an animal waste facility on an animal operation with more than 1,000 animal units;
- (7) Allowing cost-share rates of up to 90 percent for limited resource farmers or ranchers and beginning farmers or ranchers;
- (8) Reducing the minimum length of a contract from five years to one year after installation of the last practice;
- (9) Increasing funding from \$200 million per year to \$400 million in FY 2002 and increasing to \$1.3 billion per year in FY 2007; and,
- (10) Imposing an average adjusted gross income (AGI) limitation.

In an effort to make the program more effective and efficient, the Department has initiated several streamlining changes, including:

- (1) Eliminating the program's dual administration by changing Farm Service Agency (FSA) participation from concurrence to consultation;
- (2) Reducing the planning requirements needed to develop the contract; and
- (3) Allowing producers to have more than one contract per tract at any given time.

The fundamental philosophy of the program, assisting agricultural producers install conservation practices to provide environmental benefits, has not changed. The statutory and Departmental changes respond to limitations and restrictions identified by agency staff and participants. Agricultural producers who are interested in participating in the program will apply as they have in the past and should experience a quicker turn around on their application. Producers also have some expanded financial opportunities with higher contract limits and the ability to receive payments earlier in the contract period.

Optimizing Environmental Benefits

While the fundamental philosophy of the program has not changed, the revision to purpose of the program combined with removal of provisions related to Conservation Priority areas and the elimination of competitive bidding by applicants has required NRCS to propose an approach that will meet the new purpose of EQIP — the optimization of environmental benefits. NRCS is proposing to optimize environmental benefits through an approach that integrates consideration of National Priorities in four key program components: 1) the allocation of financial resources to States; 2) the allocation financial resources within states; 3) the selection of conservation practices and the establishment of cost-share and incentive payment levels; and 4) the application ranking process.

With the advice of Federal agencies, NRCS will establish National Priorities that reflect our most pressing natural resource needs and emphasize off-site benefits to the environment. NRCS has identified the following National priorities:

- Reductions of nonpoint source pollutants; such as nutrients, sediment, or pesticides and excess salinity; in impaired watersheds consistent with Total Maximum Daily Loads (TMDL s) where available, as well as the reduction of groundwater contamination, and the conservation of ground and surface water resources;
- Reduction of emissions, such as particulate matter, NO_x, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;
- Reduction in soil erosion and sedimentation from unacceptability high rates on highly erodible land; and
- Promotion of at-risk species habitat recovery.

In establishing a National priority of at-risk species habitat recovery, NRCS recognizes unique local situations have the potential to add to federally listed and candidate species. NRCS supports activities that will reduce the need for additional regulation but will monitor implementation of this aspect of the program to assure that primary focus is listed and candidate species.

NRCS has also identified National measures that can help EQIP achieve its National priorities and statutory requirements more efficiently. These proposed measures include identifying and implementing conservation practices that:

- Increase overall environmental benefits, for example by addressing multiple resource concerns, ensuring more durable environmental benefits and limiting adverse ancillary impacts;
- Encourage innovation;
- Support the statutory mandate to apply nationally 60 percent of available financial assistance to livestock-related conservation practices;

- Employ appropriate tools to more comprehensively serve EQIP purposes, such as Comprehensive Nutrient Management Plans and Integrated Pest Management Plans.

In the NRCS allocation of financial resource to states, NRCS is proposing that the National priorities and measures be used as guidance in determining the amount of funds received by states. NRCS is also proposing to retain a portion of EQIP funding to reward states that demonstrate a higher level of performance and address National priorities. Within states, NRCS is proposing that State Conservationists consider National priorities and measures as they allocate funds and determine priority resource concerns within their state. Similarly, NRCS is proposing that the State Conservationist, or the Designated Conservations, develop an application ranking that reflects both priority resource concerns within states and the National priorities and measures. Further detail about the specific changes in each of these key components is included in the Summary of Provisions.

While this proposal explicitly recognizes National priorities and measures, NRCS will continue to rely on locally led conservation as an important cornerstone of EQIP. Using a locally led process ensures consideration of the wide variability between and within states regarding resource issues, solutions, and limitations. Resource issues and concerns change as a result of shifts in population, climatic, or consumer habits; and Federal, state and local laws. Likewise, technical solutions evolve with the advent of new technology and the availability of new data on the effectiveness of practices. As a result, EQIP implementation may vary across jurisdictional boundaries. For example, some states may use state-level based program delivery while others will use county or parish based or regional (multi-county) based delivery.

Efficient and effective implementation of EQIP will be accomplished by building upon the existing NRCS delivery system that uses a line and staff organizational structure to provide both

technical¹ and policy guidance from the National level to the local District Conservationist level. This delivery system will empower the state and local levels to adapt National Priorities and measures to site-specific conditions. State and local NRCS Conservationists will continue to supplement the EQIP Manual by specifying which practices qualify for EQIP payments and establishing maximum cost share rates, incentive payment levels, and the application ranking processes.

Ground and Surface Water Conservation

The 2002 Act also added a provision to EQIP which specifically addresses ground and surface water conservation with dedicated funding. Section 1240I of the 1985 Act provides the Secretary authority to promote ground and surface water conservation by providing cost-share payments, incentive payments, and loans to producers to carry out eligible water conservation activities including improvement to irrigation systems; enhancement of irrigation efficiencies; conversion to the production of less water-intensive agricultural commodities or dryland farming; improvement of the storage of water through measures such as water banking and ground water recharge; or mitigation of the effects of drought. NRCS seeks comments regarding how to administer a loan program in accordance with this section.

The Secretary may provide EQIP assistance for ground and surface water conservation to a producer only if the assistance will facilitate a conservation measure that results in a net savings in ground water or surface water resources in the agricultural operation of the producer. NRCS seeks comments regarding what criteria NRCS should use to determine what should constitute an

¹ Technical guidance is provided to all NRCS personnel using manuals, handbooks, bulletins, and memos. The primary technical tools are the soil surveys, the National Planning Procedures Handbook, the General Manual, and the Handbook of Conservation Practices. Based on this guidance from the National level, the State and District Conservationists, in coordination with universities, other federal agencies, conservation districts, and others, assemble the Field Office Technical Guide (FOTG) which is specific to each local NRCS office. The FOTG contains the primary scientific references tailored for NRCS at the local level. The FOTG contains identified natural resource concerns at each location, local reference data about soil, watersheds, air, and plant and animal resources, locally approved conservation practices including interim practices, the cost of implementing conservation practices, local and state laws and regulations, etc. Information about FOTGs can be found at <http://www.nrcs.usda.gov/technical/efotg/>.

agricultural operation. Should NRCS consider all the land operated by the producer, the contiguous parcel that includes the field where the practices are being implemented, or just the field in which the practices are being implemented?

Klamath Basin

Section 1204I(c)(2) of the 2002 Act dedicates an additional \$50 million for ground and surface water conservation activities in the Klamath Basin located on the Californian/Oregon boarder. Pursuant to the 2002 Act, NRCS intends to use EQIP to implement this provision in accordance with the statutory requirements for ground and surface water conservation, such as improved irrigation systems, enhanced irrigation efficiencies, and improved water storage, with a goal of an overall net savings for agricultural operations. However, due to the complexity of resource issues in the Klamath Basin, a reduction of water usage may not always be the only appropriate solution available. Improving the quality of Klamath Basin water resources makes more usable water available, thus resulting in a net savings related to agricultural uses. Water conservation activities in the basin can therefore include water quality improvements as well as a reduction in water usage by agricultural operations.

The two Klamath Basin State Conservationists will lead a basin planning effort to identify water conservation activities to address the basin s resource issues. This plan may require additional funding from sources other than the \$50 million in EQIP funding identified for the basin. NRCS seeks comments regarding how the Klamath Basin water conservation provisions should be implemented.

Credit Trading

NRCS recognizes that long-term environmental benefits can also be achieved utilizing innovative alternative approaches to provide incentives for a producer to implement conservation practices. One example is the use of trading mechanisms for water quality credits, under which a

producer could sell credits derived from the implementation of conservation practices to other dischargers, who would use these credits for regulatory compliance. In order to assure net reductions in pollutant discharges, credits would need to be derived from conservation practices that go beyond any existing responsibilities of the producer. Pilot trading programs have already demonstrated substantial environmental progress at reduce cost.

NRCS would like to support the institutionalization of water quality credit trading. Accordingly, NRCS is considering the possibility of waiving any and all interests in credits the producers generate using EQIP funds. While producers would be normally be compensated for the costs incurred in generating credits through their sale in private markets, NRCS recognizes that in the absence of established markets, there is considerable uncertainty for producers, particularly if they wish to impalement conservation practices before a buyer has been identified. For this reason, NRCS believes it may be appropriate to support development of trading program, for a limited time until functioning markets are established, by allowing producers to generate credits using EQIP funds that could potentially be sold in a trading market. At the same time, NRCS recognizes that there may be concern about allowing credits generated with taxpayer money to be sold for private gain. Any such waiver would likely have limitations; for example restricted to only those credits associated with the EQIP program and only for the duration of the 2002 Farm Bill, FY 2002 through FY2007. NRCS might also try such a waiver program on a pilot basis, to determine if it was effective in helping to establish self sustaining credit markets. NRCS seeks comments on adopting a limited waiver program, as well as on innovative mechanisms more generally that NRCS could consider to institutionalize alternatives for encouraging conservation implementation.

Summary of Provisions

The rule is organized into three subparts: Subpart A — General Provisions; Subpart B — Contracts; and, Subpart C — General Administration. The basic structure of the rule has not changed. However, NRCS is proposing to eliminate, add, or change several sections in Subparts A and B to make the rule consistent with the requirements of the 2002 Act and Departmental streamlining, to explicitly incorporate National priorities and measures, and to increase the overall transparency of the program. We provide a summary of each section below for Subparts A and B and identify proposed changes. We do not provide a detailed summary of Subpart C. This subpart describes administrative aspects of EQIP including appeal rights and exceptions thereto, the responsibilities of the participant to obtaining necessary easements and complying with other laws and regulations and provide USDA representatives with access to land, and provisions for relief if a participant relies on advice or action of a NRCS representative. Only minor changes were made in this subpart to reflect the determination that NRCS will administer EQIP.

Subpart A — General Provisions

Section 1466.1 sets forth the purpose, scope, and objectives of EQIP. The use of EQIP for educational assistance is removed from this section to reflect section 1240(B) of the 1985 Act, as amended by the 2002 Act. Air has also been added to the list of natural resource concerns addressed by this program.

Section 1466.2 describes the roles of NRCS, FSA, other agencies, the State Technical Committees, and Local Work Groups. This section has been changed to reflect the Department's streamlining initiative. Specifically, with the delegation of EQIP to NRCS, 1466.2(a)-(d) of the current rule, which described FSA's roles and responsibilities, has been eliminated. In 1466.2(b), NRCS and FSA will consult at the national level on program and policy decisions and FSA may

continue to have an advisory capacity in the administration of EQIP by participating on the State Technical Committees and Local Work Groups.

NRCS is clarifying the roles and responsibilities of State Technical Committees and Local Work Groups in 1466.2 (c). While EQIP is administered by NRCS and all program decisions are made by NRCS, some decisions, such as determination of eligible practices and cost-shares rates and development of the ranking process, may be delegated to the State Conservationist. The State Conservationist will use advice of the State Technical Committee to make these decisions. The State Conservationist can, in turn, make a final decision or delegate the authority to a Designated Conservationist at the regional or local level. The Designated Conservationist will use advice from a Local Work Group to make decisions delegated to their level. Additional information regarding NRCS policy for State Technical Committees and Local Work Groups can be found at

http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_501.htm.

Section 1466.3 sets forth definitions for terms used throughout the part. Several new definitions, including comprehensive nutrient management plan, limited resource farmer or rancher, beginning farmer or rancher, priority natural resource concerns, National priorities, National measures, Conservation Innovation Grants, EQIP plan of operations, and technical service providers are proposed to address statutory changes and administrative changes resulting from the Department's streamlining initiative. Other terms, such as agricultural operation, conservation district, and wildlife have been proposed to provide greater clarity. Because the administration of EQIP has been delegated to NRCS, definitions related to FSA, such as Administrator and Farm Service County Committee have been removed from this section. We are also proposing to eliminate definitions for Conservation Management System, Conservation Plan, Livestock related Natural Resource Concerns, National Conservation Priority Area, Priority Area, and Private Agribusiness Sector, Resource management

system, unit of concern, and vegetative practice because these terms are no longer used in the proposed regulatory language.

A definition for the comprehensive nutrient management plan (CNMP) is included because it is specifically authorized by the 2002 Act. The definition is included to provide the technical base and is the same that NRCS uses in its Comprehensive Nutrient Management Planning Technical Guidance which is part of the NRCS National Planning Procedure Handbook.

Section 1240B of the 1985 Act, as amended by the 2002 Act, gives the Secretary the authority to increase the cost-share rate up to 90 percent for Limited Resource Farmers and Ranchers and beginning farmers or ranchers. NRCS proposes to use two criteria to define a limited resource producer or rancher. Specifically, a Limited Resource Producer or Rancher is a person with direct or indirect gross farm sales not more than \$100,000 (to be increased starting in FY 2004 to adjust for inflation) and 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 (to be determined annually), in each of the previous two years.

NRCS will use a definition for Beginning Farmer or Rancher that is consistent with the USDA definition of that term under Section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) as found at 7 CFR 1941.4. NRCS is proposing to define a Beginning Farmer or Rancher as an individual or entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years and will materially and substantially participate in the operation of the farm or ranch. 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. In the case of a contract made with an entity, all members must materially and

substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired. For an entity to be defined as a Beginning Farmer or Rancher, all members of the entity must qualify. This regulation interprets the maximum length of farming experience allowable for Beginning Farmer or Rancher to be 10 consecutive years.

In order to assure consistency of program implementation, new definitions have been included for National priorities, National measures and priority natural resource concerns.

A definition of Conservation Innovative Grants is defined in this section because it is specifically authorized by the 2002 Act. This definition is included to provide guidance as to what these grants will be used for.

The 2002 Act authorizes NRCS to use certified Technical Service Providers for providing technical assistance, a definition of who qualifies as a TSP is included. A definition of the EQIP plan of operations is included to clarify to producers what is required to be eligible for EQIP assistance. A discussion of the EQIP plan of operations is included in/1466.9.

Section 1466.4 is a new section that lists and describes how National priorities will be used to implement EQIP. Regulatory language related to Program Requirements found in/1466.4 of the current EQIP rule has been moved to/1466.7 in this proposal.

NRCS has established National priorities and measures to guide the allocation of EQIP funds and assist in the prioritization of EQIP applications. The National priorities are listed in/1466.4(a) and/1466.4(b) describes how NRCS will use the National priorities to implement the program at the state and local level. The Chief intends to review these National priorities and measures annually, utilizing input from the public and affected stakeholders and Federal agencies, and make revision as

required to address emerging resource issues. Information and updates about the National priorities and measures will be provided to the State Conservationists through revisions to the EQIP manual.

Section 1466.5 is a new section that describes program management including National funding allocation. In/1466.5 of the current rule priority areas and significant statewide natural resource concerns have been deleted from the regulatory language of this proposal.

This section describes the first key component in optimizing environmental benefits, the allocation of EQIP funds from the Chief to the State Conservationists. It also includes provisions for program management such as an incentive awards holdback, progress monitoring, periodic evaluation of program delivery and public disclosure of program results.

NRCS is proposing that the Chief of NRCS, with advice of other Federal agencies and in consultation with FSA, will make National funding allocation decisions that reflect the most pressing national resource needs.

Specifically, NRCS will determine the allocation of EQIP funds to NRCS State Conservationists based on National priorities and measures. NRCS will also include other considerations in their allocation decision, such as:

- The significance of the environmental and natural resource concern and the opportunity for environmental enhancement;
- The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of 7 CFR part 12;
- The ways the program can best assist producers in complying with Federal, State, local, and Tribal environmental laws, quantified where possible;
- The amount of agricultural land in different land use categories, such as grazing land, specialty crops, and others; and

- Other relevant information to meet the purposes of the program.

NRCS will evaluate the existing allocation formula and will consider additional factors to address air quality concerns such as air quality non-attainment areas and acres of cropland with excessive wind erosion. When updating the national allocation formula, NRCS intends to solicit input from an interagency Task Force of Federal agencies, which have knowledge and expertise in the areas of soil, water, air, wildlife and other related natural resources. NRCS seeks comments regarding what process should be used and factors should be considered when evaluating the National funding allocation formula.

NRCS is also proposing to retain a portion of the initial EQIP funding each fiscal year to reward states that demonstrate a higher level of performance in the implementation of EQIP and in addressing the National priorities in the previous year. When allocating the incentive holdback funds to those states demonstrating higher levels of performance, the Chief of NRCS will analyze the management decisions of the State Conservationist and State EQIP implementation performance considering factors such as:

- The degree to which states strategically prioritize and address priority resource concerns, such as through statewide conservation plans, fund allocation, and application ranking;
- the use of contracts with long lived practices;
- the use of contracts with cost-effective practices;
- the use of contracts that benefit multiple resources;
- the efficiency and cost-effectiveness of program delivery;
- the degree to which program implementation addresses National priorities;

- the extent to which Technical Service Providers are engaged to help deliver the program;
- the degree to which Limited Resource Producers are participating; and
- the degree to which states encourage innovation and the leveraging of EQIP funds.

NRCS is formulating the incentive award process and anticipates that the financial bonus will be distributed to a limited number of states assuring that the concept of a bonus is maintained. NRCS is soliciting comments regarding what approaches NRCS can use to efficiently and effectively implement this award incentive.

NRCS will set aside a portion of the available EQIP funding for purposes of complying with the regional equity provision of Section 1241(c) of the 1985 Act as amended by Section 2701 of the 2002 Act. The regional equity provision requires the Secretary to give, before April 1, a priority for certain conservation program funding to applications in states that have not received an aggregate of \$12 million from those programs.

In order to manage EQIP in a manner that continues to optimize environmental benefits, NRCS will undertake periodic reviews of the effects of program delivery at the state and local level. State Conservationists will prepare annual reports explaining how EQIP was implemented within the state and the accomplishments that were achieved and the Chief will assure that information regarding EQIP implementation will be made available to the public using technology such as the internet on the NRCS World Wide Website at <http://www.nrcs.usda.gov/EQIP/>. NRCS seeks comments on how best to evaluate the performance of the EQIP program. For example, how should environmental changes be measured, and what methodologies would best identify environmental effects due to contract activities? What kind of output measures and data collection strategies should NRCS consider? What approaches could NRCS use to evaluate cost-effectiveness?

Section 1466.6 is a new section that describes the responsibilities of State Conservationists in the allocation of funds and implementation of the EQIP program. Much of the language found in *1466.6* of the current rule, Conservation plan, has been used in *1466.9* of the proposed rule, EQIP Plan of Operations.

The allocation of funds within States is the second key component in optimizing environmental benefits. NRCS proposes that the State Conservationists will be responsible for identifying State priority natural resource concerns that incorporate National priorities and measures, for identifying which of the available conservation practices should be encouraged with recommended funding levels, for establishing local level EQIP performance goals and treatment objectives, and for monitoring program performance of the NRCS field offices to ensure that National priorities and measures are being achieved. As part of this process, the State Conservationist will consider the advice of the State Technical Committee and National guidance, in the form of notices and manuals, state priorities and state based resource inventories.

NRCS also proposes that the State Conservationist may delegate implementation of EQIP to Designated Conservationists. Designated Conservationists will use the advice of Local Work Groups to implement EQIP within their area. This delegation by the State Conservationist allows for greater management flexibility at the State level and, perhaps more importantly, explicitly provides for locally led conservation. The State Conservationist will also provide specific guidance to the offices reviewing and ranking applications regarding what factors should be considered in the ranking process. The State Conservationists will provide periodic reports to the public and the Chief regarding implementation of EQIP.

NRCS is also proposing to require that State Conservationists use the following in decisions related to the management of the program and the allocation of funds:

- the nature and extent of natural resource concerns at the state and local level;
- the availability of existing programs to assist with the activities related to the priority natural resource concerns;
- the existence of multi-county and/or multi-state collaborative efforts to address natural resource concerns;
- ways and means to measure performance and success; and
- the degree of difficulty that producers face in complying with environmental laws.

As part of these considerations, NRCS expects that State Conservationists will quantify, when and where possible the goals, objectives, and solutions for natural resource concerns in order to optimize environmental benefits that would be delivered by Federal dollars. NRCS also expects that State Conservationists will use science-based background data, quantified when and where possible, on the environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns.

Section 1466.7 is a new section that describes how NRCS will establish special program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems know that they are eligible to apply for program assistance. NRCS will target its outreach efforts to limited resource farmers, Tribes, beginning farmers and ranchers, and others with historically low participation rates in the programs of NRCS, NRCS, and other USDA agencies. NRCS is exploring new possibilities to increase its outreach to these communities and Tribes.

Section 1466.7 of the current EQIP rule, Conservation Practices, has been moved to Section 1466.10 of the proposed rule.

Section 1466.8 sets forth program requirements such as land and applicant eligibility and the amount of EQIP financial assistance to be used for livestock practices. With the following exceptions, NRCS is retaining the language of Section 1466.4 in the current EQIP rule:

- Section 1466.4(b) of the current rule has been removed. Much of this language appears in proposed Section 1466.5;
- Section 1466.4(d)(iii) has been eliminated;
- Proposed Section 1466.8(b)(3) adds submission of an acceptable EQIP plan of operations as an eligibility requirement; and
- Proposed Section 1466.8(d) increases the amount directed to be used for livestock practices from 50 to 60 percent, pursuant to section 1240B(g) of the 1985 Act, as amended by the 2002 Act.

Section 1466.9 describes the requirements of the EQIP plan of operations which is the basis of EQIP contracts. Producers will be required to develop and apply an EQIP plan that addresses identified priority natural resource concerns. The producer develops the plan of operations with the assistance of NRCS or other public or private technical service providers. With the following notable exceptions, NRCS is retaining the language of Section 1466.6 in the current EQIP rule:

- Section 1466.6(a) in the current rule has been deleted. It contained requirements for maximizing environmental benefits per dollar.
- Section 1466.6(b) and (c) have been removed from this section. Proposed Section 1466.11 addresses technical assistance.
- Section 1466.6(e)(1), (2), have been deleted. This information is contained in the producer's conservation plan and would be a duplication of effort.

- Section 1466.6(f) has been deleted. The single plan that was referenced is available to producers through the NRCS Conservation Operations program and is not required as a part of an EQIP contract.
- Proposed Section 1466.9(c) requires that an EQIP plan of operations include an animal waste storage or treatment facility to include a comprehensive management nutrient plan. Section 1240E(a)(3) of the 1985 Act, as amended by the 2002 Act, requires, in the case of a confined livestock feeding operation for the producer to submit an EQIP plan of operations that provides for the development and implementation of a comprehensive nutrient management plan.
- Proposed Section 1466.9(e) allows participant to receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by Section 1240I of the 1985 Act only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

Section 1466.10 describes how eligible practices will be determined by NRCS. NRCS State Conservationists will determine which conservation practices will be eligible and the maximum payment levels in the State. The State Conservationist may also request that the Designated Conservationist determine which conservation practices will be eligible in localities within the limits established by the State Conservationist.

The proposed language in Section 1466.10 does not include any of the language related to confined livestock operations found in Section 1466.7(b) of the current EQIP rule. The 2002 Act removed the restriction that a producer who owns or operates a large confined livestock operation cannot be eligible for cost-share payments through EQIP to construct an animal waste management facility. Financial assistance is available to all livestock producers regardless of size.

NRCS is also proposing to add paragraph (f) to Section 1466.10. It would permit NRCS to approve interim conservation practice standards and financial assistance for pilot testing new technologies or innovations. NRCS will involve other entities, including extension and research agencies and institutions, conservation districts, universities, private industry, and others, in pilot testing to evaluate and assess the practices. This portion of the regulation remains unchanged.

Section 1466.11 is a new section that addresses the sources of technical assistance to carry out EQIP. NRCS will provide technical assistance and will encourage producers to use the services of certified personnel of cooperating Federal, State, or local agencies, or private entities who can provide technical assistance. As determined by the State Conservationist, NRCS may contract with private enterprises or enter cooperative agreements with other Federal, State, or local entities for services related to EQIP implementation. NRCS retains the responsibility for ensuring that technical program standards are met. This section of the regulation remains unchanged, as proposed, but may be modified in the final rule to conform with the final rule for Technical Service Provider Assistance, 7 CFR 652 (see 72 FR 70119, Nov. 21, 2002).

Subpart B — Contracts

Section 1466.20 addresses applications for contracts and selection of offers from producers. The revisions to this section are pursuant to both statutory changes regarding section 1240C, which provides that contract selection will give higher priorities to applications that encourage cost-effective conservation and address National priorities, and USDA s streamlining initiative. The evaluation of applications using a ranking process is the fourth contributing factor to optimizing environmental benefits .

NRCS 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. NRCS will announce, in advance, the date on which NRCS will begin evaluating and ranking applications.

Before evaluating individual applications, the State Conservationist or designee, with advice from the State Technical Committee, and Local Work Groups, will develop ranking criteria to prioritize producer applications. The ranking process will evaluate applications according to the magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns. The ranking will determine which applications will be awarded contracts. The ranking process will be designed to award higher scores for offers from producers that address National and State priorities in conjunction with local resource concerns. The ranking process will score the producer s offer of conservation practices according to the following criteria as well as other locally defined pertinent factors:

- Use of cost-effective conservation practices;
- Treatment of Multiple Resource Concerns;
- Use of conservation practices that provide environmental enhancements for a longer periods of time; and
- Compliance with Federal, state, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation.

NRCS proposes that state and local lists of eligible practices, cost-share rates and incentive payment levels, and the ranking process will be posted on the NRCS EQIP website before final ranking of applications. NRCS will also make the appropriate ranking process or processes available at each local NRCS office.

NRCS is proposing to delete the ranking and selection criteria currently in 1466.20(f)(1) and (g). The first criterion refers to consideration of the environmental benefits per dollar. As this purpose has been eliminated from the authorizing statute, this criterion is no longer necessary. Consistent with 2002 Act, NRCS is proposing that cost considerations alone will not be the only factor when comparing two applications that are expected to provide similar environmental benefits.

NRCS will give additional consideration to contracts that will help the producers comply and exceed requirements of environmental laws, such as EPA's Concentrated Animal Feeding Operations (CAFO) regulatory requirements, the Clean Water Act and Endangered Species Act.

In development of the ranking process, NRCS will recognize that EQIP can play an important role in assisting producers with conservation, restoration, and enhancement of fish and wildlife habitat on working lands. By identifying sound habitat practices targeted at priority species that are at risk from long term declines, EQIP can help producers aid those species while avoiding complications arising out of listings. Many at risk species are benefited by existing soil and water conservation practices. With minor additional effort they can be aided by additional practices that will benefit all resources simultaneously in a manner compatible with working operations. NRCS, state technical committees and local working groups will continue to collaborate with United States Fish and Wildlife Service, National Marine Fisheries Service, and state fish and wildlife agencies to capitalize on opportunities to proactively address at risk fish and wildlife species in conjunction with other resource concerns.

NRCS is also proposing that the approving authority for EQIP contracts will be the State Conservationist or designee except that:

- (1) The approving authority for any contract that contains a structural practice with a cost-share rate exceeding 50 percent is the State Conservationist, and

(2) The approving authority of all contracts with payments greater than \$100,000 is the NRCS Regional Conservationist.

Section 1466.21 addresses the requirements for EQIP contracts. Only land that meets the purpose and goals of the program and is to be treated under EQIP will be included in the contract.

NRCS is including the following changes to the current EQIP language:

- In Section 1466.21(a) that both cost share payments and incentive payments may be included in the EQIP contract.
- Pursuant to section 1240B(b)(2) of the 1985 Act, as amended by the 2002 Act, Section 1466.21(b) the minimum contract length is revised from five years to one year after installation of the last practice. This part was also revised to allow more than one contract on a tract as a result of the Department's streamlining efforts.
- In Section 1466.21(b) NRCS proposes in paragraph (3)(iv) to require the implementation of a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility.

Section 1466.22 addresses the participant's responsibility for conservation practice operation and maintenance. This part remains unchanged.

Section 1466.23 addresses cost-share rates, incentive payment levels, grants, and payment eligibility and limitations. In conjunction with Section 1466.10, this is the third key component in optimizing environmental benefits.

Subject to the National direct funding caps, State Conservationists with 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.

The number and type of eligible practices and the cost-share rates and incentive payment levels determined by the State Conservationist or designee influence the extent to which the program will optimize environmental benefits and what resource concerns will be addressed. The State Conservationist or designee, with advice from State Technical Committees and Local Work Groups will determine which conservation practices are eligible for EQIP funding in each state. The State Conservationist or designee will consider the level of environmental benefits of the eligible conservation practices and will use that information to determine cost-share rates and incentive payment levels. In general, cost share rates will be determined for structural practices, while incentive payments will be determined for land management practices. No incentive payments will be made available for land management practices that are currently generally accepted and practiced in the agricultural community. The State Conservationist or designee will set cost share rates and incentive payments that reflect:

- (1) The cost effectiveness of conservation practices;
- (2) The number of resource concerns a practice will address (e.g. a waste treatment facility that reduces ammonia emissions benefiting both air and water quality should have a higher cost-share rate than a waste storage lagoon.);
- (3) The degree of treatment of priority natural resource concerns;
- (4) The longevity of the beneficial environmental effect derived from the practice; and
- (5) The energy savings demonstrated by the practice.

NRCS intends to fund most structural practices at no more than 50 percent cost-share. NRCS will make payments to the producer when NRCS determines that the conservation practices specified in the contract are satisfactorily established. NRCS intends to monitor and evaluate the program to ensure that financial assistance is used in an appropriate manner to optimize the environmental benefits.

The EQIP contract specifies the cost-share or incentive payments the producer will receive from NRCS in return for applying the needed conservation practices and land-use adjustments according to a specified schedule. NRCS, with the advice of the State Technical Committee and/or Local Work Group and subject to funding caps, will determine the appropriate cost-share rates for structural practices and incentive payments for land management practices. In determining the amount and rate of incentive payments the State Conservationist should accord a greater significance to practices that address priority natural resource concerns.

NRCS, with the advice of the State Technical Committee or Local Work Groups, will also determine the appropriate incentive payments for development of a comprehensive nutrient management plan (CNMP). NRCS seeks comments regarding how incentive payments to develop a CNMP should be implemented.

The National direct funding cap for structural practices is 75 percent of the actual cost or 90 percent for limited resource producer and beginning farmer (Section 1240B(d)(2) of the 1985 Act as amended by the 2002 Act).

Section 1466.24 is concerned with payment eligibility and payment limitations. Pursuant to section 1240G of the 1985 Act, as amended by the 2002 Act, this part is revised to increase the contract total from \$50,000 per person to a total of \$450,000 maximum per individual or entity for all FY 2002-FY 2007 contracts and deletes the \$10,000 per year limitation. It is also revised pursuant to section 1001D of the 1985 Act, as amended by Section 1604 of the 2002 Act, to limit payment eligibility for participants who have an average adjusted gross income of more than \$2.5 million for the previous three years as determined under 7 CFR 1400 (G).

(1) Payment eligibility

For the definition of individual and entity , NRCS proposes to continue to use the provisions in 7 CFR Part 1400 related to the definition of person and the limitation of payments will be used, except that:

- (a) States, political subdivisions, and entities thereof will not be persons eligible for financial assistance.
- (b) 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 will receive, directly or indirectly, more than the limitation. Annually, the certifying official must provide to NRCS a list of members, by Social Security Number, and the benefit each member has received.

Further, the following provisions in 7 CFR 1400 will not be used because they are not consistent with the intent and language of the EQIP statute: 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.

(2) Individual Payment Limitation

Section 1240G of the 1985 Act, as amended by the 2002 Act, establishes a \$450,000 EQIP payment limit to any individual or entity for all FY2002 through FY2007 contracts they enter either as an individual or as a beneficiary of an entity. In order to ensure that no individual will receive more than the \$450,000, NRCS will track all EQIP funds paid to any and all individuals by the social security number. In order to be eligible to participate in EQIP, the application of an individual, entity (e.g., corporation, limited liability partnership, irrevocable trust, or any other organization listed as an entity in FSA s rule 7 CFR 1400), or any other application in which there is more than one individual

listed as a beneficiary must provide a list of all members or beneficiaries, their social security numbers and the percentage interest of each member or beneficiary.

(3) Adjusted Gross Income Eligibility

Section 1001D of the 1985 Act, as amended by Section 1604 of the 2002 Act, provides that an individual or entity shall not be eligible to receive payments from several programs, including EQIP, during a crop year if the average adjusted gross income of the individual or entity exceeds \$2,500,000, unless not less than 75 percent of the average adjusted gross income of the individual or entity is derived from farming, ranching, or forestry operations. This provision of the 1985 Act will be implemented in accordance with 7 CFR 1400, Subpart G - average adjusted gross income limitation. However, since NRCS will be making a commitment for payments under an EQIP contract for a period of time into the future, NRCS will make a one-time eligibility determination in accordance with Subpart G, 7 CFR 1400 at the time of contract approval.

Section 1466.25 addresses contract modifications and transfers of land. This section is revised to remove a requirement that Conservation District will approve modifications to both the EQIP plan of operations and EQIP contract to assure there will be no conflict of interest where the Conservation District is also a Technical Service Provider.

Section 1466.26 addresses the procedures to be followed for contract violations and terminations. Changes reflect the determination that NRCS will administer EQIP.

Section 1466.27 is reserved for future regulations that address implementation of Conservation Innovation Grants.

Section 1240H of the 1985 Act, as added by the 2002 Act, gives the Secretary the authority to use EQIP funds to pay up to 50 percent of the cost of competitive grants that are intended to stimulate innovative approaches to leveraging Federal investment in environmental enhancement and protection,

in conjunction with agricultural production. USDA will issue a future public notice to solicit comments on how the Conservation Innovation Grants provision should be implemented.

Regulatory Certifications

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 5241 South Building, USDA, 14th and Independence Avenue SW, Washington, DC. 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. A summary of the Economic Analysis can be found at the end of this preamble and a copy of the analysis is available upon request from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250-2890 or electronically at <http://www.nrcs.usda.gov/programs/eqip/index.html> under Additional Information .

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 Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant

impact (FONSI) before a final rule is published. Copies of the draft EA and draft FONSI may be obtained from Mark W. Berkland, Conservation Operations Division, Conservation Operations Division, Natural Resources Conservation Service, Room 5241-S, Washington, DC 20250-2890 and electronically at <http://www.nrcs.usda.gov/programs/eqip/index.html> under Additional Information . Mail comments on the draft EA and draft FONSI by **[Insert date that is 30 days after date of publication in the Federal Register]**, to Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250-2890, or submit them via the internet to farbillrules@usda.gov.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this proposed rule will not have a significant effect on minorities, women and persons with disabilities. Copies of the Civil Rights Impact Analysis and Finding of No Significant Impact may be obtained from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, and electronically at <http://www.nrcs.usda.gov/programs/eqip/index.html> under Additional Information .

Paperwork Reduction Act

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

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. The forms and other information collection activities required for participation in the program proposed under this rule are not yet fully developed for the public to conduct business with NRCS electronically. However, the application form will be available electronically through the USDA eForms Web site at <http://www.sc.egov.usda.gov> for downloading. Applications may be submitted at the local USDA service centers, by mail or by FAX. Currently, electronic submission is not available because signatures from multiple producers with shares in agricultural operations are required.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule are not retroactive. 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 Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Public Law 103-354), USDA classified this proposed rule as major and NRCS 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 Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890,

Washington, DC 20013-2890, and electronically at <http://www.nrcs.usda.gov/programs/eqip/index.html> under Additional Information .

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), NRCS assessed the effects of this rulemaking action on State, local, and Tribal government, 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.

Economic Analysis - Executive Summary

Background

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service has conducted a benefit cost analysis of the Environmental Quality Incentives Program as formulated for the proposed rule. The Department of Agriculture Reorganization Act of 1994 and the Unfunded Mandates Reform Act of 1995 also require analysis of costs, benefits and risks associated with major regulation. These requirements provide decision makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimize negative impacts to health, human safety and the environment.

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, reductions in non-point source pollution damage, 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 \$6.16 billion over the six-year period of FY 2002 through

FY 2007, with annual amounts for the base program and the ground and surface water conservation provisions increasing to \$1.36 billion in FY 2007 after the initial authorization in FY 2002 year of \$425 million. In addition, the 2002 Act authorizes a total of \$50 million for the Klamath Basin in California and Oregon.

Prior to the promulgation of the Environmental Protection Agency's "National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (EPA CAFO) final rule which was published on December 15, 2002, NRCS estimated that 63 million acres of agricultural land will be treated over the six years of the program, including 44 million acres of cropland, 10 million acres of grazing land (pasture and rangeland), and 9 million acres for wildlife. The total evaluated on and off-site environmental benefits were projected to be \$6.8 billion including \$3.6 billion from animal waste treatment and \$3.2 billion from land treatment. 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, and reduced flood damages. Additional benefits are from reduced pollution of surface and ground water from agrochemical, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat.

This analysis was conducted prior to the promulgation of the EPA CAFO final rule. The CAFO rule was published on December 15, 2002 and it underwent changes up to the time of promulgation. As a result, this analysis could not accurately separate the benefits and costs associated with the CAFO rule and those associated with the EQIP proposed rule. There is still some flexibility in the EPA CAFO rule relative to which facilities will be required to have an National Pollutant Discharge Elimination System (NPDES) permit. However, it is known that the CAFO rule will apply to all facilities with

more than 1,000 animal units (AUs). Since the CAFO rule claims the environmental benefits for controlling pollution on these facilities, the EQIP rule cannot make the same claim. EQIP will be a primary vehicle for funding compliance with the CAFO rule transferring some of the funding obligations from producers to EQIP so the costs associated with implementing the required pollution control measures apply to EQIP.

This analysis will be revised to take into account comments received during the Proposed Rule comment period. During this revision, a full review of the overlap of the costs and benefits associated with the CAFO and EQIP rules will be undertaken. Meanwhile, it is estimated that approximately \$1.7 billion in annual benefits that were identified in the EQIP economic analysis can be attributed to the EPA CAFO regulation. Consequently, total EQIP benefits are \$5.1 billion and net benefits relative to EQIP funds are \$620 million and net benefits relative to total costs of -\$1.5 billion.

Methodology

In developing the benefit cost analysis for EQIP, it was necessary to identify a baseline for comparison. Since EQIP was created in 1996, the regulation and policy guidance for implementing that version was considered a baseline. In addition, changes to EQIP as outlined in the 2002 Farm Bill have been implemented via a Notice of Fund Availability (NOFA) issued in fiscal year 2002. This version of the program was also used as a basis for comparison, hence a two-tiered approach to the cost-benefit analysis. In order to estimate potential program impacts, several alternatives or variations of EQIP as outlined in the NOFA have been evaluated. Costs and benefits have been quantified where possible. Costs and benefits that could not be adequately or accurately quantified are discussed qualitatively.

Public costs quantified in this analysis are the total technical and financial assistance outlined in Congressional Budget Office scoring of the 2002 Farm Bill. Private costs are out of pocket costs paid

by producers based on average cost share rates of EQIP. The quantifiable benefits are a subset of the environmental benefits that accrue to the types of practices implemented with EQIP. Available data and literature were found which support benefits in the following categories:

- Reduction in sheet and rill reduction as predicted by the Universal Soil Loss Equation (USLE)
- Improved forage production on grazing lands
- Reduced wind erosion resulting in both improved air quality and reduced soil loss
- Increased irrigation water use efficiency
- Benefits of wildlife viewing and hunting resulting from improved wildlife habitat management
- Reduced fertilizer expense resulting from nutrient management practices not associated with animal waste
- Animal waste benefits
 - ◆ Savings resulting from decreased fertilizer purchases
 - ◆ Increased recreational activity resulting from improved water quality
 - ◆ Improved commercial shell fishing
 - ◆ Reduced incidence of fish kills
 - ◆ Reduced contamination of private wells

In order to conduct the analysis, it was necessary to make certain assumptions based on the available data.

- Practice mix for the old and new EQIP is the same.
- Quantifiable benefits and per unit benefits are constant, and all benefits are based on national averages.

- Technical assistance costs are based on the full workload and costs associated with implementing the EQIP program, and are based on a projected average contract size.
- Average annual and net present value calculations use an OMB-recommended discount factor of 7 percent.

Description of Alternatives

Tier One

The baseline for comparison is the historical EQIP as established in the 1996 Federal Agricultural Improvement and Reform Act. The baseline reflects historical funding levels projected forward along with existing policy. Alternative one consists of EQIP as defined in the 2002 NOFA. The NOFA alternative reflects increased funding levels, no buy-down provision², the elimination of priority areas, and maximum payment limitation of \$450,000, with a payment cap of 50 percent cost-share for any practices with an actual cost exceeding \$100,000, and the inclusion of large confined animal feeding operations (CAFOs). These are the most significant changes in the program legislation in terms of economic costs and benefits.

Tier Two

For the second tier of the cost-benefit analysis, the baseline (EQIP 2002 Farm Bill as outlined in the NOFA) is compared to three alternatives. Comparison of these alternatives represents sensitivity analyses of potential policy impacts of EQIP implementation. Following is a brief description.

Alternative One - Varying AFO/CAFO funding allocation by size class

² The buy-down provision of the old EQIP allowed producers to improve the offer index of their applications by reducing the amount of cost share funds they would expect.

The first alternative is an analysis of various methods of allocating funds to animal feeding operations (AFO) and confined animal feeding operations (CAFO) based on the size of the operation. The specific scenarios evaluated were allocating funds equally to each size class, allocating funds according to the necessary treatment costs, allocating funds based on the total number of animal units, allocating funds based on the number of operations, and allocating funds only to middle or smaller size operations.

Alternative Two - Varying payment limitation between \$50,000 and \$450,000

Although legislation allows a maximum payment of \$450,000 per participant, the analysis considered potential benefits if different payment limitations were allowed based on local market, cultural or economic conditions. Alternative two analyzes the effects of payment limitations ranging from \$50,000, up to the legislated maximum of \$450,000.

Alternative Three - Varying methods of environmentally targeting funds

The third alternative analyzes the effects of different fund allocation methods which target natural resource issues and concerns. The methods are:

- Homogenous evaluation process (NOFA) - A standardized allocation formula is applied to every application in every location
- Spatial evaluation process - More points are given based on proximity to an identified natural resource (i.e. an impaired stream, underground aquifer, etc.), but no participants are excluded
- Allocation and evaluation by natural resource concern - More points are given based on an identified natural resource concern, ie. water quality, soil erosion, or wildlife habitat development
- Variable cost share rates - Rates vary by practice based on effectiveness or other criteria

- Allocation formula - Established criteria are evaluated based on a weighted formula.
- Holdback option - Funds are set aside to be allocated at a later point to locations that achieved higher levels of program efficiency based on measures which have yet to be determined.

Conclusions

Tier One - Comparison of 1996 EQIP to EQIP as Outlined in the NOFA

The EQIP Benefit Cost Analysis compares the EQIP program created in 1996 (old program) with those changes associated with the 2002 program implemented through the NOFA. Additionally, several alternatives associated with the proposed rule were then compared with the NOFA.

Based upon this analysis, if EQIP is implemented as described in the NOFA, it is estimated that 63 million acres of agricultural land will be treated, categorized by 44 million acres of cropland, 10 million acres of grazing land, and 9 million acres for wildlife habitat improvement if the proposed program is implemented. This results in \$6.8 billion in total benefits, including \$3.6 billion due to animal waste treatment and \$3.2 billion due to non-animal waste land treatments.

The treatment level is expected to increase when compared to the old EQIP. An additional 0.9 million acres for sheet and rill water erosion (USLE) reduction, 2.3 million acres for wind erosion, 8.5 million acres for non-waste nutrient management, 9.6 million acres for net irrigation water reduction, 3.1 million acres for grazing productivity, and 4.1 million acres for wildlife habitat could be expected to occur on the landscape. In addition, 4.8 million animal units, and 2,755 animal feeding operations could be treated and total soil loss from agricultural land decreased by 7.5 million tons/year.

Under the assumption of the old program continuing at level funding and not accounting for the effects of the EPA CAFO rule, the net present value of benefits over the period of 2002-07 was estimated to be \$2.2 billion with \$0.3 billion coming from waste treatment and \$1.9 billion from land

treatment. Net benefits were \$1.2 billion above EQIP funds and -\$0.2 billion if total costs were accounted for.

Net benefits under the new program were \$2.3 billion above EQIP funds and \$0.2 billion if total costs were accounted for.

The difference between the net benefits estimates of the two scenarios is due to three factors:

- scale effect associated with increased funding;
- practice mix effect as a larger share of funds are allocated to livestock waste treatment and efficiencies; and
- cost effect, since with cost share buy down eliminated, the government cost per treated unit is most likely increased.

Analysis suggests that implementation of EQIP outlined in the NOFA would provide substantial benefits and would help achieve program objectives of solving identified natural resource concerns while optimizing environmental benefits.

The option to include large AFOs, elimination of priority areas and discussion of increased payment limitation are discussed in detail in Tier Two of the benefit-cost analysis. Other proposed changes in EQIP are not quantified in this analysis due to lack of available data necessary to accurately evaluate effects. These include potentially shorter average contract lengths due to the fact that single practices will be allowed and contracts may terminate one year after completion of the last practice, allowing multiple contracts per tract of land, and providing higher cost share rates for limited resource producers or beginning farmers.

Tier Two - NOFA Compared to Policy Options

Alternative One: Alternatives to AFO/CAFO Funding

This analysis was generated before EPA has promulgated the CAFO rule, which regulates all large AFOs above 1,000 AUs. With the promulgation of this rule, EQIP can no longer claim environmental benefits from treatment of large producers, since they must comply with CAFO regulations. Use of EQIP resources would therefore be most efficiently used in treating the next largest non-regulated class of producers.

Allocating funds based on share of total animal units (AUs) results in 42 percent of the funding going to the largest size class (>1,000 AUs), and achieves the greatest net benefits of \$2.03 billion and \$1.02 billion for EQIP funds and total costs. Conversely, the allocation based on share in numbers of operations, the largest size class would only receive 4 percent of the funding and would achieve net benefits of \$378 million and \$-315 million for EQIP funds and total costs, respectively. Clearly, some efficiencies are lost due to the fact that it costs more per animal unit to treat the smaller size class AFOs than the large farms.

The strategy generating the highest net benefits (of the six alternatives evaluated) is to allocate the funds across the size classes according to their proportionate share in total number of AUs. That strategy would result in treatment of 15.8 million AUs, compared to as low as 9.4 million AUs for the strategy with the lowest net benefits (allocation divided evenly to the 3 smallest size classes and excluding funding to CAFOs.) The more that funds are shifted towards the (non regulated) larger AFOs, the larger the number of AUs treated, the lower the TA cost, and the greater the estimated benefits.

By comparison, if farms with greater than 1,000 animal units remained excluded from EQIP funding for animal waste practices, a total of 11,400 farms, with a total of 23 million animal units, and an overall need of \$500 million in CNMP costs would remain ineligible for EQIP funding. In the scenario of not funding large CAFOs, this analysis shows that although net benefits would exceed the

net EQIP costs, net benefits would be the lowest of all scenarios, with \$314 million for EQIP funds and \$-421 million for total costs.

Under the NOFA scenario, this analysis assumed that the 50 percent of EQIP funding designated for animal waste treatment would be divided equally across the four AFO size classes. However, from the total EQIP benefits, the benefits accruing from treatment of the largest class of AFOs, greater than 1,000 AUs, are excluded. This exclusion is appropriate now that the Environmental Protection Agency has formally published its revised CAFO rule and the benefits from treatment of those large AFOs are credited to the CAFO rule rather than the EQIP program. The definition of AFOs governed by the new CAFO rule has a broader reach than the simple "greater than 1,000" class defined in this analysis. At this time, the extent to which the CAFO regulation covers small and medium sized AFOs is unclear. It is assumed that the coverage is not significant.

Alternative Two: Payment Limits Between \$50,000 and \$450,000

Although actual payment depends on the specific conservation system applied and the cost share rate, an assumed or artificial limit on payments can be used to analyze comparative environmental benefit. Data in the benefit-cost analysis suggests that while the various payment limitations do not have great bearing on the total number of farms that would be affected by the caps, a significant number of animal units could be eligible for funding without payment limitations at the higher cap levels.

At the \$450,000 payment limitation level, only one percent of the remaining livestock farms would still be capped in the costs of implementing animal waste-related conservation practices. However, those large farms control 27 percent of the animal units. These represent the biggest farms with the highest total costs, but lowest cost per animal unit.

Although there are relatively few additional farms that would be funded as payment limitations increase, these farms have a large number of animal units. Increasing the payment limitation from \$50,000 to \$100,000 would allow an additional 9 million animal units to be eligible for funding under the payment limitation. Increasing the payment limitation from \$300,000 to \$450,000 would only increase the number of animal units by fewer than 3 million.

At \$50,000, only 33 percent of the livestock farms animal units would be eligible for funding without reaching the cap. At \$100,000, half of the nation s animal units would qualify for EQIP funding without reaching the cap, and at the \$450,000, almost three quarters of the nation s animal units would qualify for EQIP funding without reaching the payment limitation cap.

Although legislation allows a maximum payment of \$450,000 per participant, it is assumed that the Agency and states may set lower limitations if necessary based on local market, cultural or economic conditions. The economic analysis indicates, there is no economic gain associated with imposing lower payment limitations. Since the larger farms represent those with the highest number of animal units and greatest cost efficiencies per animal unit, the program benefits by allowing full participation up to the payment maximum.

Alternative Three: Alternative Application Evaluation Procedures to Ensure Cost-Effective, Environmentally Targeted Fund Allocation

Under the previous program, 65 percent of funds were allocated to specially targeted, geographically defined areas. The NOFA/Proposed Rule eliminates the process of designating funds to conservation priority areas. There is concern that this will have a negative impact on the potential environmental benefits due to the fact that funds may not be targeted to specific geographic areas, and the environmental effects of practice implementation will be diluted by scattering cost share assistance over a much broader area.

Six options for environmentally targeting EQIP funds were compared in this alternative. Results of these comparisons indicate that if technical assistance costs are constant, then adopting some form of spatial evaluation, varying cost share by practice effectiveness, or allocating funds with a formula based on priority resource concerns could all have positive effects on total benefits.

In the case of varying fund allocation to emphasize a particular resource concern, the share of total funds allocated in the NOFA was increased by 5 percent for one category and decreased by 1 percent for the other benefit categories identified in this analysis, with the exception of animal waste. The results of these changes indicate that targeting non-animal waste related nutrient management concerns would yield the greatest net benefits above total costs (\$673 M), compared to net benefits of \$180 Million for the NOFA. When compared to the NOFA, net benefits would increase respectively for each category that was emphasized using the set percentages. When compared to the NOFA, total net benefits would decrease if grazing land productivity or wind erosion categories were to receive an increased share of funds. Although targeting by resource concern can have overall positive effects on benefits, emphasizing one particular resource concern may overlook the relationships between natural resource effects, and fail to capitalize on them.

In the case of varying cost share levels by practice, the National priorities are emphasized by reducing the cost share rates for practices that have primary impacts in the other benefit categories. For the purposes of this analysis, it is assumed that the average cost share for EQIP is 75 percent in the NOFA. This rate is decreased to 60 percent (mild) and to 50 percent (aggressive) for erosion reduction, grazing productivity, and wildlife habitat improvement. The results indicate that pursuing National priorities with a cost share mechanism can increase total benefits by 5 percent in the mild scenario, and by 8 percent for the more aggressive scenario. This rule allows flexibility at the state level to

provide higher cost-share rates for practices that impact local resource concerns while reducing cost-share rates for practices that do not optimize benefits at the local level.

In addition to these methods, a holdback of funds for distribution based upon an objective comparison of states using performance criteria can be a useful tool that could increase net benefits and increase program efficiency. Data suggests that in spite of the removal of the requirement for geographically based priority areas, other approaches to targeting of EQIP funds to the most critical natural resource concerns are feasible and will have positive effects on total program benefits. This will ensure that environmental benefits are optimized and program objectives are met, but without excluding participation by persons outside of a designated boundary.

NRCS will revise and enhance this analysis for the final rule. Future analysis will seek to evaluate alternative allocations of program dollars across different conservation practices and quantify and estimate their impacts.

To better implement the program to optimize environmental benefits, as required by the 2002 Act, 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-site and off-site environmental benefits and economic returns to various conservation practices, and other literature about incentive schemes for technology adoption.

List of Subjects in 7 CFR part 1466

Administrative practices and procedures, conservation, natural resources, water resources, wetlands, payment rates.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to amend Part 1466 of Title 7 of the Code of Federal Regulations as follows:

PART 1466 ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A - General Provisions

- 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

- 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.

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.

2. Subparts A, B and C, are revised to read as follow:

Subpart A--General Provisions

/1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (NRCS) provides assistance and 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. 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 rule, 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 herein to lower organizational levels shall preclude the Chief of NRCS or a Designated Conservationist from determining any issues arising under this Part or from reversing or modifying any determination made under this Part.
- (e) NRCS may enter into cooperative agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, and public and private not-for-profit organizations to assist NRCS with implementation of the program.

/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 an area covered by the ground and surface water conservation program requirements and used to establish net savings.

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

Applicant means a producer, either an individual or entity, who has requested in writing to participate in EQIP. Producers who are members of a joint operation, as defined in 7 CFR 1400, shall be considered one applicant.

Beginning Farmer or Rancher means an individual or entity who:

- (a) 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
- (b) Will materially and substantially participate in the operation of the farm or ranch.
- (1) 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
- (2) In the case of a contract with an entity, 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 (State Conservationist or Designated Conservationist).

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.

Confined livestock feeding operation means an animal feeding operation 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 in the normal growing season over any portion of the confined area.

Conservation district means any district or unit of State or local government formed under State 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 person who has been accepted to participate in the program. An EQIP contract is a cooperative agreement for the transfer of assistance to the participant 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.

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

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

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.

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

Indian trust lands means real property in which:

- (a) The United States holds title as trustee for an Indian or Tribal beneficiary, or
- (b) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Individual means a person who can receive EQIP payments.

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:

- (a) A person with direct or indirect gross farm sales not more than \$100,000 (to be increased starting in FY 2004 to adjust for inflation), and
- (b) 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 (to be determined annually), in each of the previous two years.

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, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State Conservationist identifies with the advice of the State Technical Committee.

Livestock production means farm and ranch operations involving the production, growing, raising, breeding, and 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 means 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 to 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.

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 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.

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 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 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, permanent wildlife habitat 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 of professional conservationists; and evaluation and assessment of the program.

Technical service provider means an individual, private-sector entity, or public agency certified by the State Conservationist 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 pollutants such as nutrients, sediment, or pesticides and excess salinity in impaired watersheds consistent with TMDL s 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, 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 unacceptability high rates on highly erodible land; and
 - (4) Promotion of at-risk species habitat recovery.
- (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 to assist with prioritization and selection of EQIP applications at the state and local levels, 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 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 states 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 an incentive award to States that demonstrate a high level of program performance in implementing EQIP considering factors such as strategically planning EQIP implementation, the use of long lived and cost-effective practices, benefits to multiple resources, the efficiency and cost-effectiveness of program delivery, achieving National priorities, the use of Technical Service Providers, contracts with Limited Resource Producers, and encouraging innovation and the leveraging of EQIP funds. These funds will be made available annually from a reserve established at the National level when funds become available.
- (c) Use NRCS s Integrated 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 using available technology such as the internet.
- (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 used and how the program will be administered to achieve National priorities and measures in each state.

/1466.6 State Allocation and Management.

The State Conservationist, will:

- (a) Identify State priority natural resource concerns with the advice of the State Technical Committee that incorporate National priorities and measures and will use NRCS s Integrated Accountability System to establish local level EQIP performance goals and treatment objectives;
- (b) Identify, as appropriate and necessary, Designated Conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas, and
- (c) Use the following to determine how to manage the EQIP program and how to allocate funds within a state:
 - (1) The nature and extent of natural resource concerns at the state and local level;
 - (2) The availability of human resources, incentive programs, education programs, and on-farm research programs from Federal, State, Indian Tribe, and local levels, both public and private, to assist with the activities related to the priority natural resource concerns;

- (3) The existence of multi-county and/or multi-state collaborative efforts to address regional priority natural resource concerns;
- (4) Ways and means to measure performance and success; and
- (5) The degree of difficulty that producers face in complying with environmental laws.

/1466.7 Outreach Activities.

NRCS will establish program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems and priority natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian Tribes, Alaska natives, and Pacific Islanders.

/1466.8 Program requirements.

- (a) Program participation is voluntary. The applicant develops an EQIP plan of operations for the agricultural land to be treated that serves as the basis for the EQIP contract. NRCS provides participants with cost-share or incentive payments to apply needed conservation practices and land-use adjustments.
- (b) To be eligible to participate in EQIP, an applicant must:
 - (1) Be in compliance with the highly erodible land and wetland conservation provisions found at Part 12 of this title;
 - (2) 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;

- (ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide the Chief with the written concurrence of the landowner in order to apply a structural conservation practice.
 - (3) Submit an EQIP plan of operations that is acceptable to NRCS as being in compliance with the terms and conditions of the program;
 - (4) Comply with the provisions at 7 CFR 1412.304 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; and
 - (5) Supply information, as required by NRCS, to determine eligibility for the program; including information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher.
- (c) Land used as cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a threat to soil, water, air, or related natural resources, may be eligible for enrollment in EQIP. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:
- (1) Privately owned land;
 - (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; and
 - (ii) The conservation practices will contribute to an improvement in the identified natural resource concern; or
 - (3) Tribal, allotted, or Indian trust land.

- (d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands directly attributable to livestock production, as measured at the National level.

/1466.9 EQIP plan of operations .

- (a) All conservation practices in the EQIP plan of operations must be carried out in accordance with the applicable NRCS field office technical guide.
- (b) The EQIP plan of operations must include:
 - (1) A description of the participant's specific conservation and environmental objectives to be achieved;
 - (2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;
 - (3) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;
 - (4) A description of the schedule for implementing the conservation practices, including timing and sequence; and
 - (5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.
- (c) An EQIP plan of operations that includes an animal waste storage or treatment facility must include a comprehensive nutrient management plan.
- (d) Participants are responsible for implementing the EQIP plan of operations.
- (e) A participant may receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by section 1240I of the 1985 Act, 16 U.S.C. 3839aa-9,

only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

/1466.10 Conservation practices.

- (a) NRCS will determine which structural and land management practices are eligible for program payments. To be considered as an eligible conservation practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to address priority natural resource concerns. A list of eligible practices will be available at the local NRCS office.
- (b) Cost-share and incentive payments will not be made to a participant for a conservation practice that the applicant has applied prior to application for the program.
- (c) Cost-share and incentive payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or Designated Conservationist prior to the installation of the practice.
- (d) A participant will be eligible for cost-share or incentive payments for irrigation related structural and land management practices only on land that has been irrigated for three of the last five years prior to application for assistance.
- (e) Where new technologies or conservation practices that provide a high potential for optimizing environmental benefits 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.

/1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

- (a) NRCS may use the services of qualified technical service providers in performing its responsibilities for technical assistance.
- (b) Participants may use technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian Tribes who are certified as Technical Service Providers by NRCS.
- (c) 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. Payments to certified technical assistance providers will be made only for an application that has been approved for payments.
- (d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving EQIP payments.
- (e) When NRCS authorizes payment for a practice that is certified by non-USDA personnel, the technical service provider must indemnify and hold NRCS and the program participant harmless for any costs, damages, claims, liabilities and judgments arising from past, present and future negligent acts or omissions of the technical service provider in connection with the technical service provided.

Subpart B Contracts and Payments

/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. Applications are accepted throughout the year. Producers who are members of a joint operation may file a single application for the joint operation.

(b) The State Conservationist or Designated Conservationist with advice from the State Technical Committee or Local Work Groups will develop a ranking process to prioritize applications for funding which address priority natural resource concerns. The State Conservationist or Designated Conservationist will periodically select for funding the applications based on applicant eligibility and the NRCS ranking process. The State Conservationist or Designated Conservationist will rank all applications according to the following factors:

- (1) Use of cost-effective conservation practices,
 - (2) The magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns,
 - (3) Treatment of multiple resource concerns,
 - (4) Use of conservation practices that provide environmental enhancements for a longer period of time,
 - (5) Compliance with Federal, state or local regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation, and
 - (6) other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements..
- (c) If the State Conservationist determines that the environmental values of two or more applications for cost-share payments or incentive payments are comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

- (d) The ranking will determine which applications will be awarded contracts. The approving authority for EQIP contracts will be the State Conservationist or designee except that:
- (1) The approving authority for any EQIP contract that contains a structural conservation practice with a cost-share greater than 50 percent is the State Conservationist.
 - (2) The approving authority for any EQIP contract with total payment greater than \$100,000 is the NRCS Regional Conservationist.

/1466.21 Contract requirements.

- (a) In order for a participant to receive cost-share or incentive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Both cost-share payments and incentive payments may be included in a contract.
- (b) An EQIP contract will:
 - (1) Identify all conservation practices to be implemented, the timing of practice installation, and applicable cost-shares and incentive payments allocated to the practices under the contract;
 - (2) Be for a minimum duration of 1 year after completion of the last practice, but not more than 10 years;
 - (3) Incorporate all provisions as required by law or statute, including requirements that the participant will:
 - (i) Not conduct any practices on the farm or ranch unit under the contract, or agricultural operation of the producer for ground and surface water conservation contracts, that would tend to defeat the purposes of the contract;

- (ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of section 1466.25;
 - (iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of section 1466.24;
 - (iv) Implement a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility; and
 - (v) Supply information as may be required by NRCS to determine compliance with the contract and requirements of the program.
- (4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of section 1466.22; and
- (5) Any other provision determined necessary or appropriate by NRCS.
- (c) The participant must apply at least one contracted practice within the first 12 months of signing a contract.

/1466.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of conservation practices applied under the contract. The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon must be operated and maintained as specified in the contract. NRCS may periodically inspect a conservation practice during the lifespan of the practice as specified in the contract to ensure that operation and maintenance are occurring. When

NRCS finds that a participant is not operating and maintaining practices in an appropriate manner, NRCS will request a refund of cost-share or incentive payments made for that practice under the contract.

/1466.23 Cost-share rates and incentive payment levels.

- (a) Determining Cost-share payment rates.
 - (1) The maximum cost-share payments made to a participant under the program will not be more than 75 percent of the actual cost of a structural practice, as determined by the State Conservationist or Designated Conservationist, except that for a Limited Resource Farmer or Rancher or Beginning Farmer and Rancher cost-share payments may be up to 90 percent, as determined by the State Conservationist or Designated Conservationist.
 - (2) Cost-share rates and incentive payment levels for conservation practices will be established by the State Conservationist or Designated Conservationist with advice from the State Technical Committee and Local Work Groups in consideration of the practice cost-effectiveness, longevity and environmental benefit achieved. The State Conservationist or Designated Conservationist will develop a list of eligible conservation practices with varied cost-share rates and will set:
 - (i) Cost-share rates and incentive payment levels that reflect a conservation practice cost-effectiveness and innovation,
 - (ii) Cost-share rates and incentive payment levels for practices based on the degree of treatment of priority natural resource concerns,
 - (iii) Cost-share rates and incentive payment levels that reflect the number of resource concerns a practice will address,

- (iv) Cost-share rates and incentive payment levels that reflect a practice's longevity of beneficial environmental effect, and
- (v) Cost-share rates and incentive payment levels based on other pertinent local considerations.
- (3) The cost-share payments to a participant under the program will be reduced proportionately below the rate established by the State Conservationist or Designated Conservationist, or the cost-share limit as set in paragraph (a)(2) of this section, to the extent that total financial contributions for a structural practice from all public and private sources exceed 100 percent of the actual cost of the practice.
- (b) Determining Incentive Payment levels. NRCS will provide incentive payments to participants for a land management practice or to develop a comprehensive nutrient management plan in an amount and at a rate necessary to encourage a participant to perform the practice that would not otherwise be initiated without government assistance. The State Conservationist or Designated Conservationist, with the advice of the State Technical Committee or Local Work Groups, may consider establishing limits on the extent of land management practices that may be included in a contract.

/1466.24 EQIP payments.

- (a) Except as provided in paragraph (b) of this section, the total amount of cost-share and incentive payments paid to an individual or entity under this Part may not exceed an aggregate of \$450,000, directly or indirectly, for all contracts entered into during fiscal years 2002 through 2007.
- (b) To determine eligibility for payments, NRCS will 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 considered to be persons eligible for payment.
- (2) For purposes of applying the payment limitations provided for in this section, the following will not apply: 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.
- (3) To be eligible to participate in EQIP, all individuals considered to be part of an application must provide a social security number.
- (4) To be eligible to participate in EQIP, any entity, as identified in 7 CFR 1400, must provide a list of all members of the entity and embedded entities along with the member s social security numbers and percentage interest in the entity.
- (5) With regard to contracts on Tribal land, Indian trust land, or BIA allotted land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA or a Tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, listing of individuals and payments made, by social security number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request by NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.
- (6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

- (7) Eligibility for payments in accordance Section 7 CFR 1400(G), average adjusted gross income limitation, will be determined at the time of contract approval.
- (8) Eligibility for higher cost-share payments in accordance with paragraph (a)(1) of this section will be determined at the time of approval of the contract.
- (c) A participant will 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 practice on same land under any other conservation program administered by USDA.
- (d) Before NRCS will approve and issue any cost-share or incentive payment, the participant must certify that the conservation practice has been completed in accordance with the contract, and NRCS or other approved technical service provider certifies that the practice has been carried out in accordance with the applicable NRCS field office technical guide.

/1466.25 Contract modifications and transfers of land.

- (a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification and the EQIP plan of operations is revised in accordance with NRCS requirements and is approved by the Designated Conservationist.
- (b) The participant and NRCS may agree to transfer a contract to another producer. The transferee must be determined by NRCS to be eligible to participate in EQIP and must 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) NRCS may require a participant to refund all or a portion of any assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new

owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

/1466.26 Contract violations and termination.

- (a) (1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS shall give the participant a reasonable time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract.
- (2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of Section 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.
- (b) (1) If NRCS terminates a contract, the participant will forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with Part 1403 of this chapter. NRCS has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of 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 lifespan of the practice.

- (2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. NRCS will have the option to waive the liquidated damages, depending upon the circumstances of the case.
- (3) When making contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the hardships beyond the participant's control that have prevented compliance with the contract.
- (4) The participant may voluntarily terminate a contract if NRCS determines that termination is in the public interest.
- (5) In carrying out its role in this section, NRCS may consult with the local conservation district.

/1466.27 Conservation Innovation Grants.

[Reserved]

/1466.30 Appeals.

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

/ 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 NRCS 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, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS 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 NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a non-USDA certified technical service provider will remain with the certified technical service provider and will not be assumed by NRCS or NRCS when NRCS or NRCS authorizes payment.

/1466.34 Offsets and assignments.

- (a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard

to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

- (b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

/1466.35 Misrepresentation and scheme or device.

- (a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter.
- (b) A producer who is determined to have knowingly:
- (1) Adopted any scheme or device that tends to defeat the purpose of the program;
 - (2) Made any fraudulent representation; or
 - (3) Misrepresented any fact affecting a program determination, shall refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Signed in Washington, DC, on _____, 2003.

BRUCE I. KNIGHT

Vice President

Commodity Credit Corporation

Chief

Natural Resources Conservation Service