



Federal Register

**Monday,
March 29, 2004**

Part V

Department of Agriculture

**Commodity Credit Corporation
National Resources Conservation Service**

**7 CFR Part 1466
Conservation Innovation Grants; Interim
Final Rule and Notice**

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1466****Conservation Innovation Grants**

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the Environmental Quality Incentives Program (EQIP) final rule, published in the **Federal Register** on May 30, 2003, to describe how the Natural Resources Conservation Service (NRCS) intends to implement Conservation Innovation Grants (CIG) for eligible governmental or non-governmental organizations or individuals on a competitive basis as authorized by the Farm Security and Rural Investment Act of 2002. CIG will be available to applicants who submit proposals for projects that involve EQIP-eligible farmers and ranchers. This interim final rule also solicits public comments for consideration in developing a final rule.

DATES: Effective date: March 29, 2004. Comments must be received by May 28, 2004.

ADDRESSES: NRCS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to: Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705.
- E-Mail: Send comments to cig@usda.gov.
- Fax: Submit comments by facsimile transmission to: (301) 504-2264.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

You may access this interim final rule via the Internet through the NRCS home page at <http://www.nrcs.gov>. Select "Farm Bill."

FOR FURTHER INFORMATION CONTACT: Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705. Phone: (301) 504-2222; facsimile: (301) 504-2264. Send e-mail to: cig@usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720-2600.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

The CIG program was authorized as part of EQIP, with an unspecified annual funding level from FY2003 through FY2007. This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this interim final rule is not a significant rule making action. Therefore, completion of a benefit-cost assessment of potential impacts is not necessary. An economic evaluation was completed, however, because of the aid that such an evaluation provides to the rulemaking process. A copy of this document is available upon request from: Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705. Phone: (301) 504-2222; facsimile: (301) 504-2264; or on the Internet at <http://www.nrcs.usda.gov/programs/cig>.

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. The 2002 Farm Bill states that a regulation may be promulgated as an interim final rule effective on publication with an opportunity for notice and comment if determined to be appropriate by the Secretary of Agriculture or the Commodity Credit Corporation. Since its inclusion as a discretionary provision under EQIP in the 2002 Farm Bill, CIG has generated a great deal of interest from both the agricultural and environmental communities. Implementation of CIG was delayed, however, while regulations for mandatory NRCS conservation programs were promulgated. With funds available for CIG in FY 2004, a determination was made to issue this interim final rule with request for public comments in order to implement CIG without further delay. The public comments, together with the experience gained from implementing CIG in this fiscal year, will be considered during the drafting of the final rule, which NRCS intends to issue prior to publication of a CIG request for proposals in FY 2005.

Environmental Evaluation

Promulgation of this rule does not authorize any activities that will affect the human environment. This rule establishes the policies and procedures that will be used to award Conservation

Innovation Grants. The grants awarded under this regulation are for innovative projects; therefore, NRCS has a limited ability to predict the types of actions that may be carried out during a CIG project. Any attempt to analyze the effects of proposed actions would be speculative. Accordingly, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared at this time. Instead, the environmental effects of each CIG proposal will be evaluated on a case-by-case. As a part of the evaluation, CIG applicants are required to submit an environmental profile as part of their application. These profiles will be used to determine whether an EA or EIS is needed for any given project, prior to the awarding of grant funds.

Paperwork Reduction Act

Section 2702(b)(1)(A) of the 2002 Act provides that the promulgation of regulations and the administration of title II of the Act shall be made without regard to chapter 35 of title 44 of the United States Code, the Paperwork Reduction Act. Accordingly, these 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.

Government Paperwork Elimination Act

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

Executive Order 12998

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

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

Pursuant to Section 304 of the Federal Crop Insurance Reform and Department

of Agriculture Reorganization Act of 1994 (Pub. L. 104–354), NRCS did not classify this interim final rule as major and, therefore, NRCS did not conduct a risk analysis. A risk analysis was completed on the EQIP program, establishing that EQIP will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the EQIP risk analysis is available on request from Jose Acevedo, Deputy Chief for Programs, Natural Resources Conservation Service, 14th and Independence Ave., SW., Room 5109–S, Washington, DC 20250, and electronically at http://www.nrcs.usda.gov/programs/Env_Assess/EQIP/EQIP_RA_121002.pdf.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on local, State, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any local, State, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Summary of Conservation Innovation Grants

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

To address this need, Section 1240H of the Food Security Act of 1985 was added by section 2301 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), and established CIG as part of the Environmental Quality Incentives Program (EQIP) [16

U.S.C. 3839aa-8]. Through CIG, the Secretary of Agriculture may pay the costs of competitive grants to carry out projects that stimulate innovative approaches to leveraging the Federal investment in environmental enhancement and protection in conjunction with agricultural production. The Secretary of Agriculture delegated the authority for the administration of EQIP, including CIG, to the Chief of NRCS, who is a vice president of the Commodity Credit Corporation (CCC). EQIP is administered under the authorities of the CCC.

The Chief may designate an amount of funds available for CIG. NRCS is proposing to award these funds on a competitive basis through a two-tiered process. A nationwide grants competition will be announced in the **Federal Register** through a Request for Proposals (RFP). In addition, the Chief may provide each State Conservationist with the discretion to implement a separate State-level component of CIG. Funding availability for these distinct State-level competitions will be announced through public notices, separately from the national program.

CIG funds for the national component will be designated from the national EQIP allocation. Applications will be requested from eligible governmental or non-governmental organizations or individuals for competitive consideration of grant awards for single or multi-year projects.

Selection will be based on the proposal evaluation criteria published in the RFP. Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception allows grantees who are either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities, to derive up to 75 percent of their matching funds from in-kind contributions.

Summary of Provisions and Request for Comments

The following discussion summarizes the provisions in each paragraph of the interim final rule, explains the alternatives that NRCS considered, describes NRCS's preferred approach, and requests public comment on specific issues. In addition, NRCS welcomes comments on all aspects of this interim final rule and the following broad issues:

- What type of innovative approaches and technologies should CIG address?
- What should the geographic scope be for innovative approaches and technologies addressed through CIG?
- What level of funding is appropriate to meet the objectives of CIG?
- Should NRCS provide special consideration for under-represented individuals or entities through CIG?
- Should CIG be driven by natural resource conservation concerns?
- What natural resource conservation concerns should CIG address, both initially and in future years?
- What criteria should be used to evaluate CIG proposals?

(a) *Definitions.* This paragraph sets forth definitions for terms used throughout the CIG interim final rule that are additions to the EQIP rule. Most definitions are derived from the statute, NRCS technical guidance documents, or regulations for other programs administered by NRCS.

(b) *Purpose and Scope.*

(1) *Purpose.* This paragraph states the purpose of CIG.

(2) *Geographic scope.* Listed in this paragraph are the locations from which NRCS will accept applications for CIG.

(3) *Program Scope.* NRCS welcomes comments on the scope and program design of CIG. NRCS determined that CIG will be implemented using a two-tiered approach. A nationwide grants competition will be announced in the **Federal Register**. The national grants competition will emphasize projects that have a goal of providing benefits over a large geographic area. These projects may be watershed-based, regional, multi-State, or nationwide in scope.

In addition, the Chief may provide each State Conservationist with the discretion to implement a separate State component of CIG. The Chief may decide, in any given year, to implement the national component only. The size of the EQIP application backlog and State staff workload are two examples of factors that may influence the Chief's decision.

(4) *Program Focus.* Applications for CIG should demonstrate the use of innovative approaches to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. NRCS deliberated on two critical issues related to this statutory charge and program implementation. NRCS welcomes comments on both issues.

First, NRCS considered what types of projects should be allowed under CIG. The statute provides the examples of "market systems for pollution

reduction” and “innovative conservation practices, including the storing of carbon in the soil.” Further, the Conference Report for Public Law 107–171 encourages awarding CIG grants “* * * for practices that foster markets for nutrient trading and for the continued implementation and acceleration of programs for demonstrating innovative nutrient management technology systems for animal feeding operations” (House Report 107–424, page 496). Thus, NRCS has interpreted the statute as allowing two broad types of projects to be funded under CIG—approaches and technologies (either individually or used in combination). Following are two general examples of projects that would be eligible for funding under CIG. These examples do not represent any bias on the part of NRCS in soliciting for, or making awards to, any particular type of project:

- Market-based environmental credit trading projects addressing one or more natural resource concern; and,
- Community-based solutions to watershed-based or regional natural resource concerns that cannot be addressed by a single producer, or by a group of producers taking individual on-farm actions.

Second, it was determined that CIG is not a research program. Instead, it is a vehicle to stimulate the adoption of conservation approaches or technologies that have been studied sufficiently to indicate a likelihood of success and to be candidates for eventual technology transfer. The statute indicates that the innovative approaches funded under CIG should be developed in conjunction with agricultural production. Thus, CIG will fund projects targeting innovative on-the-ground conservation, including pilot projects and field demonstrations. NRCS recognizes, however, that by targeting on-the-ground conservation, there is a risk of attracting applications for projects that are not truly innovative or that qualify for funding through EQIP. Therefore, technologies and approaches that are eligible for funding in the project geographic area through EQIP are ineligible for CIG funding. Applicants should reference each State’s *EQIP Eligible Practices List* by contacting the NRCS State office, or by visiting the EQIP web site: http://www.nrcs.usda.gov/programs/eqip/EQIP_signup/2004_EQIP/2004_EQIP.html.

NRCS believes that the prospect for transfer of approaches or technologies developed under the program is a critical component of any CIG project; its importance is reflected in the proposal evaluation criteria described in

paragraph (g) of this preamble. NRCS anticipates that, when appropriate, innovative approaches or technologies validated through the use of CIG funds will be incorporated into NRCS conservation practice standards, technical notes, field handbooks, or other references.

(5) *Innovative Conservation Projects and Activities*. NRCS developed the description of innovative conservation projects and activities for use in CIG. Proposed CIG projects must adhere to this description, as it is a critical component of the proposal evaluation criteria. NRCS welcomes comments on this description.

(c) *Availability of Funding*.

(1) CIG funding will be available for single- or multi-year projects. Availability of CIG funds will be announced through a RFP. The CIG statute provides no guidance as to the level of funding that should be provided. NRCS has deliberated on the issue of setting the funding levels for CIG. NRCS considered three options:

- Have the Chief determine funding for CIG annually;
- Establish a permanent percentage of the total EQIP funding that would be made available for grants at the National or State level; and,
- Establish a minimum threshold for CIG funding (minimum for CIG to be a viable program).

The first option (Chief determination) was chosen. A number of factors may influence the annual funding level of CIG. For example, in Fiscal Year 2003, CIG was not implemented because of the late passage of appropriations, an existing backlog in applications to the EQIP program, and the statutory direction to use EQIP dollars to fund the technical assistance for certain other Farm Bill conservation programs. Similar factors may influence CIG in any given future year. Determining the CIG funding level annually provides the Chief with maximum flexibility to adjust to changing levels of available funds and program conditions. Funds for CIG are designated by the Chief from funds made available for EQIP.

NRCS welcomes comments on the issue of funding levels for CIG.

NRCS is proposing to establish funding limits and ranges for CIG projects, to be published in the RFP. The Chief may revisit these funding limits and ranges and adjust them annually. A maximum funding limit for individual projects would ensure that a greater number of projects receive funding. Establishing anticipated funding ranges would provide potential applicants with reasonable funding expectations. NRCS is proposing to

establish a maximum funding limit of \$1 million per project for the national component. The anticipated range for most national awards is \$75,000 to \$500,000.

(2) According to the statute, the cost-share rate for CIG shall not exceed 50 percent of the cost of the proposed project. Based on an informal survey of comparable federal grant programs, NRCS decided that in-kind contributions should be allowed to comprise a portion of the applicant’s matching funds. Up to 50 percent of the applicant’s match (up to 25 percent of the total project cost) may derive from in-kind contributions. NRCS established an exception regarding matching funds for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for such projects may derive from in-kind contributions. This exception is intended to help these under-represented groups meet the CIG statutory requirement of a minimum 50 percent non-federal contribution. NRCS welcomes comments on this exception.

(3) This paragraph describes the technical assistance and oversight responsibilities of NRCS and the grantee. While the grantee is responsible for the technical assistance for CIG projects, NRCS retains responsibility for technical oversight of grant projects, and will designate a Federal Grant Representative for each grant award. This NRCS employee will provide technical oversight to grantees. Technical oversight may include review of project designs or approaches, technical review, and on-site visits.

(4) This paragraph describes CIG funding restrictions. NRCS established funding restrictions to ensure that CIG funds are used solely to advance program objectives. A detailed list of unallowable costs will be published in the RFP. NRCS welcomes comments on this issue.

(d) *Natural Resource Conservation Concerns*.

NRCS determined that grants should be awarded based on a set of natural resource conservation concerns. These natural resource concerns will be identified in the RFP that solicits grant applications, and applicants will be evaluated on how well their proposed projects address one or more of the concerns. The other alternative considered by NRCS was to solicit for grant applications based on specific technologies or approaches (e.g., market-based approaches, animal waste management technologies). This option

was rejected for two primary reasons: (1) Soliciting for specific technologies or approaches would not provide enough flexibility to applicants, and would likely result in certain technologies or approaches being overlooked; and (2) soliciting through natural resource concerns is consistent with the approach used for EQIP, under which CIG was authorized. It is USDA's intention to provide flexibility to applicants in order to obtain the greatest degree of creativity and innovation possible in addressing natural resource concerns, consistent with the overall program objective. NRCS welcomes comments on this approach of using natural resource concerns to drive the CIG program.

NRCS considered using EQIP national priorities to guide CIG (EQIP national priorities are listed in the EQIP rule, 7 CFR part 1466). Instead, NRCS designed a protocol for soliciting input on natural resource concerns. State Conservationists were asked to identify the top three natural resource concerns in their States. Briefings also were held in Washington, DC with other Federal agencies, conservation organizations, environmental stakeholder groups, and agricultural stakeholder groups. Each group was asked to submit its top three natural resource conservation concerns. This input from States, Federal agencies, and stakeholder groups was compiled and analyzed to identify the natural resource concerns that should appear in the CIG RFP. NRCS anticipates using this protocol, or a similar protocol, to identify natural resource concerns each year before developing the RFP. NRCS welcomes comments on this solicitation protocol.

NRCS considered whether the concerns should be narrowly drawn into priorities or described more broadly. It was decided that the descriptions of the concerns in the RFP initially should be broad and inclusive, with potential for prioritizing a narrower set of natural resource concerns in future years. NRCS decided to group the natural resource concerns under five topic headings, with subtopics that provide more detailed guidance to applicants.

Following are the five initial natural resource conservation concerns for CIG. The natural resource concerns may be reviewed and updated each year to ensure that CIG continues to address critical resource conservation needs. NRCS intends to receive input from State Conservationists, the Agricultural Research Service, the Cooperative State Research, Extension, and Education Service, and other federal agencies when reviewing and updating the natural resource concerns. NRCS

welcomes comments on these natural resource concerns.

(1) *Water Resources*. The objective of this natural resource concern is to implement new technologies and approaches to maintain, restore, or enhance water quality or quantity in watersheds with predominantly agricultural land uses while sustaining productivity. Subtopics include:

- (i) Nutrient, pesticide, and pathogen transport to surface water and groundwater;
- (ii) Sediment transport to surface water;
- (iii) Irrigation management for water conservation;
- (iv) Aquifer recharge/maintenance of groundwater supplies; and
- (v) Increased water supplies/availability through alternative treatment or reuse strategies.

(2) *Soil Resources*. The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance soil resources associated with agricultural and forest land uses while sustaining productivity. Subtopics include:

- (i) Erosion reduction;
- (ii) Accumulation of harmful constituents in soils, including nutrients, metals, salts; and
- (iii) Overall soil quality and productivity.

(3) *Atmospheric Resources*. The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance air quality and atmospheric resources through agricultural and forest practices while sustaining productivity. Subtopics include:

- (i) Agricultural emissions of particulates, odors, volatile organic compounds, and greenhouse gases;
- (ii) Carbon sequestration in soil and through other mechanisms; and
- (iii) Bio-based energy opportunities.

(4) *Grazing Land and Forest Health*. The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance grazing land and forest health while sustaining productivity. Subtopics include:

- (i) Invasive species management on grazing and forest land;
- (ii) Effects of pests, diseases, and fragmentation on forest and grazing land quality/health; and
- (iii) Systems or practices to minimize overgrazing and restore lands suffering effects of overgrazing.

(5) *Wildlife Habitat*. The objective of this natural resource concern is to implement new technologies or

approaches for environmentally sound wildlife habitat management while sustaining agricultural productivity. Subtopics include:

- (i) Riparian area management and restoration;
- (ii) Invasive species management;
- (iii) Biodiversity; and
- (iv) Wetland function and health.

(e) *Eligibility Information*.
(1) *Organization or Individual Eligibility*. This paragraph describes the requirements for CIG eligibility. The CIG provision of the EQIP statute authorizes the Secretary to provide grants to governmental and nongovernmental organizations and persons, on a competitive basis, to carry out projects that involve producers that are eligible for payments or technical assistance under EQIP. NRCS has determined that the CIG statutory language warrants the exclusion of Federal agencies as grant recipients. This is because the statutory language calls for leveraging of the Federal investment, requiring that matching funds come from non-Federal sources. Note that while Federal agencies may not be a grant recipient, they are not barred from participating in a CIG project as a partner or cooperator, as long as their contribution is not counted as part of the CIG non-Federal match requirement.

USDA wishes to inform potential applicants about the applicability of EQIP payment limitations to CIG grant funds. Section 1240G of the Food Security Act of 1985 (as amended by the Farm Security and Rural Investment Act of 2002), 16 U.S.C. 3839aa-7, imposes a \$450,000 limitation for all cost-share or incentive payments disbursed to individuals or entities under an EQIP contract between 2002 and 2007. Because CIG is a provision under EQIP, NRCS deliberated on whether the payment limitation also applies to CIG. NRCS determined that the limitation applies in the following manner:

- CIG funds are awarded through grant agreements and it was determined that these grant agreements are not EQIP contracts; thus, CIG awards are not limited by the payment limitation; and,
- Grant funds that are provided to a producer or entity to carry out structural, vegetative, or management practices count toward each producer's or entity's EQIP payment limitation. The procedures and policies of this part will be followed to implement this payment limitation for CIG. NRCS will work with CIG grantees to ensure that the payment limitation is followed for all CIG projects.

Following are three examples of how the \$450,000 EQIP payment limitation applies to CIG projects:

- A \$500,000 CIG grant is awarded to a State environmental agency to demonstrate an innovative, market-based, water quality trading program. The money is used to finance the development of the market infrastructure, and none of the funds are used to implement structural, vegetative, or management practices. Producers in the trading market demonstration area may indirectly benefit from their eventual participation in the market, but there is no direct or indirect transfer of CIG dollars. If, on the other hand, part of the CIG award were used to provide funds to producers who implement a conservation practice on their land as part of a trading program, those funds would count towards each producer's \$450,000 EQIP payment limitation.

- A \$1,000,000 CIG grant is awarded to a Conservation District to pilot a community-based animal waste treatment technology innovation. EQIP-eligible producers in the area transport their animal waste to a central treatment location. Because producers are not directly or indirectly receiving CIG funds, the payment limitation does not apply. If, however, the technology were to be installed on five producers' property for demonstration purposes, the CIG funds would count toward each producer's \$450,000 EQIP payment limitation. Similarly, if the producers were paid for their waste, or for transporting their waste to the central treatment location, out of CIG funds, the payments would be subject to each producer's EQIP payment limitation.

- An individual producer applying for a \$500,000 CIG grant already has an EQIP contract for \$100,000. The producer is awarded a grant to implement an innovative management practice, but the amount would be reduced to \$350,000 in order to comply with the EQIP payment limitation.

(2) *Project Eligibility.* The CIG statute mandates that projects involve producers eligible for payments or technical assistance under EQIP. While the statute does not elaborate on the nature or extent of EQIP eligible producer involvement, NRCS has determined that because CIG was authorized under EQIP, projects must substantially involve and benefit EQIP eligible producers. Applicants must describe how the proposed project will substantially involve and benefit EQIP eligible producers. Further, NRCS has determined that all producers involved in a CIG project must be EQIP eligible. This determination was based on the fact that CIG is a component of EQIP. To be EQIP eligible, an individual must meet the eligibility requirements of

§ 1466.8(b)(1)–(3) of the EQIP rule (7 CFR 1466). Producers participating in a CIG project are not required to have an EQIP contract. NRCS welcomes comments on these determinations.

(3) *Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes.* NRCS recognizes the need to provide special consideration to underrepresented or historically underserved producers or groups of producers. This interim final rule includes two programmatic exceptions for Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes. These exceptions are designed to encourage the participation of Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in CIG.

The first exception regarding matching funds and in-kind contributions is described in section (c) of this notice and applies to both the national and the State component of CIG. The second exception applies to the national component only. Two options were considered for this exception: (1) Set-aside up to 10 percent of the total funds available for CIG for applicants who are Beginning or Limited Resource Farmers or Ranchers, or Indian Tribes, or community-based organizations comprised of or representing these entities. Funds not used in the set-aside pool would revert back into the general CIG funding pool; and, (2) include special consideration for these under-represented groups in the proposal evaluation criteria. NRCS chose the first option. A set-aside sends a clear, explicit signal that NRCS supports the equitable distribution of grants. Moreover, a set-aside provides strong incentive for the inclusion of under-represented groups in CIG projects.

NRCS welcomes comments on the special consideration provided to Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes.

(f) *Application and Submission Information.* This paragraph describes the application and submission procedures for CIG. Detailed instructions will be published in the RFP.

NRCS will accept only paper application submissions for CIG until such time that NRCS elects to receive grant applications electronically through the Federal e-grants portal, *grants.gov*. When this internet portal becomes operational for CIG, information on submitting grant applications electronically will be provided in the RFP. This is consistent with the *Grants.gov* Initiative of the President's Management Agenda.

(g) *Application Review and Grant Awards.* This paragraph describes the application review and grant award process for CIG. The statute explicitly states that CIG is a competitive grants program. NRCS analyzed comparable Federal grants programs to help identify an effective and objective process for awarding grants. The proposal review and award process for CIG consists of three steps:

- Peer Review Panels—groups of Federal and non-Federal subject matter experts will evaluate proposals against the evaluation criteria described below. Proposals will be ranked and forwarded to a Grant Review Board.

- Grant Review Board—a five-member NRCS board consisting of the Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Grant Review Board will certify the rankings from the peer review panels, and ensure that the proposal evaluations are consistent with program objectives. The Board then makes recommendations for awards to the Chief.

- Chief—Final award selections will be made by the Chief.

NRCS welcomes comments on this proposal review and award process.

NRCS has developed proposal evaluation criteria for use by CIG peer review panels. Applications will be evaluated and ranked according to how well they adhere to the following four evaluation criteria:

(1) *Purpose and goals.*

(i) The purpose and goals of the project are clearly stated;

(ii) The project adheres to the CIG natural resource conservation concerns identified in the RFP; and,

(iii) There is clear and significant potential for a positive and measurable outcome.

(2) *Soundness of approach or design.*

(i) The project adheres to the description of innovative projects or activities found in paragraph (b)(5) of this section;

(ii) Technical design and implementation strategy are based on sound science;

(iii) There is a strong likelihood of project success;

(iv) The project involves EQIP eligible producers in a substantive way; and,

(v) The project promotes environmental enhancement and protection in conjunction with agricultural production.

(3) *Project management.*

(i) The proposal has clear milestones and timelines, designated staff as

applicable, and demonstrates collaboration;

(ii) The project staff has the technical expertise needed to do the work;

(iii) The budget is reasonable and adequately justified; and,

(iv) The project leverages non-federal matching funds of at least 50 percent of the total project cost, of which up to one-half (25 percent of total project cost) may be in-kind contributions (except in the case of Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes).

(4) *Transferability.*

(i) There is strong potential to transfer the approach or technology to others or to other geographical areas; and,

(ii) The project will result in the development of technical or related materials (e.g., technical standards, technical notes, manuals, handbooks, software, *etc.*) that will help foster adoption of the innovative technology or approach by other producers, and in other geographic areas.

Each of the four criterion carries an equal weight of 25 percent. In addition, NRCS considered increasing the score of projects that:

- Have a broader geographic scope;
 - Address more than one natural resource concern;
 - Include larger numbers of partners;
- or,
- Provide more than a 50 percent funding match, further leveraging Federal funds.

NRCS rejected the first three additional criteria because the quality of a project may not necessarily be improved by meeting one or more of these criteria. For example, applicants should not be encouraged to recruit extraneous project partners for the sole purpose of trying to improve a proposal's evaluation. Likewise, a high-quality proposal should not be penalized because it is focused on only a single watershed. NRCS rejected the fourth additional criterion because it would run counter to our effort to promote an equitable distribution of grant awards. NRCS welcomes comments on these issues.

(h) *State Component.* This paragraph describes the CIG State component. In addition to the national component, the Chief may provide discretion to each State Conservationist to implement a State component of CIG. For the most part, the State component will use the requirements and procedures established for the national component, except as noted in this paragraph. Funding availability and detailed application and submission information for these distinct State-level competitions will be announced

through public notices, separately from the national program. The intent of the State component is to provide flexibility to State Conservationists to target CIG funds to individual producers and smaller organizations that may possess promising innovations, but could not compete well on the larger scale of the national grants competition. The State component will emphasize projects that have a goal of providing benefits within a limited geographic area. Projects may be farm-based, multi-county, small watershed, or State-wide in scope. For the purposes of soliciting applications, the State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

For the State component, grant awards must be less than \$75,000. This limit is established to allow for streamlining of grants administration. It is anticipated that the range of funding for the State component will be between \$5,000 and \$50,000, largely because of the difficulty that producers and smaller organizations, who are most likely to apply for a State-level grant, may have in providing the 50 percent cost-share match.

Members of the State Technical Committee (or a subcommittee thereof) in each participating State will evaluate the proposals based on the Criteria for Proposal Evaluation identified in section g of this preamble. Proposal rankings will be forwarded to the State Conservationist, who will make the final award decisions.

In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes, the State Conservationist in each participating State will determine if and how to provide additional special consideration to these underserved groups.

NRCS intends to limit the opportunity for duplication of efforts between State competitions, or between the State and the national components. To do this, prior to making the final award decisions the State Conservationist in each participating State will submit a project description of the intended awards to the NRCS National Office for review. If this national review identifies a potential for a duplication of efforts, the respective State Conservationist will be informed.

NRCS welcomes comments on the design of the CIG State component.

(i) *Grant Agreement.* This paragraph describes the legal instrument that reflects the relationship between NRCS and the CIG grantee.

(j) *Patents and Inventions.* This paragraph describes the allocation of rights to any patents and inventions developed using CIG funds.

(k) *Violations.* This paragraph describes the result when a CIG grantee violates the terms of the grant agreement. For this paragraph, CIG follows the provisions contained in 7 CFR 3015 and related Departmental regulations.

List of Subjects in 7 CFR Part 1466

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

■ For the reasons stated in the preamble, the Commodity Credit Corporation amends part 1466 as set forth below:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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

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

■ 2. A new § 1466.27 is added to read as follows:

§ 1466.27 Conservation Innovation Grants (CIG).

(a) *Definitions.* In addition to the terms defined in § 1466.3 of this part, the following definitions shall be applicable to this section:

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

(2) *Grant agreement* means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law, and substantial Federal involvement is not anticipated.

(3) *Grant Review Board* consists of the NRCS Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Review Board makes recommendations for grant awards to the Chief.

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

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

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

(b) *Purpose and scope.* (1) *Purpose.* The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS will administer CIG in accordance with this section. Unless otherwise provided for in this section, the provisions of 7 CFR 3015 and related Departmental regulations will be used to administer grants under CIG.

(2) *Geographic scope.* Applications for CIG are accepted from the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) *Program scope.* Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in the **Federal Register**. In addition, at the Chief's discretion, each State Conservationist may implement a separate State-level component of CIG.

(4) *Program focus.* Applications for CIG should demonstrate the use of innovative approaches to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund projects that promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides, or to the private sector. Technologies and approaches that are eligible for funding in the project's geographic area through EQIP are not eligible for CIG funding.

(5) *Innovative conservation projects or activities.* For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:

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

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

To be given priority consideration, the innovative project or activity:

(iii) Will have been studied sufficiently to indicate a good probability for success;

(iv) Demonstrates, tests, evaluates, or verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;

(v) Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;

(vi) Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and

(vii) Adapts conservation technology, management, or incentive systems to improve performance.

(c) *Availability of funding.* (1) CIG funding will be available for single-or multi-year projects. Funding for CIG will be announced in the **Federal Register** through a Request for Proposals (RFP). The Chief will determine the funding level for CIG on an annual basis. Funds for CIG are derived from funds made available for EQIP. The Chief may establish funding limits for individual grants.

(2) Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception regarding matching funds may be made for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for these projects may derive from in-kind contributions.

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

(4) There are some costs that grantees may not cover using CIG funds, such as costs incurred prior to the effective date of the grant, entertainment costs, or renovation or refurbishment of buildings or facilities. A detailed list of

costs not allowed will be published in the RFP.

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

(e) *Eligibility information.* (1) *Organization or individual eligibility.* To be eligible, CIG applicants must be an Indian Tribe; State or local unit of government; non-governmental organization; or individual.

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

(3) *Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes.* Up to 10 percent of the total funds available for CIG may be set-aside for applications from either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.

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

(g) *Application review and grant awards.* Complete applications will be evaluated by a peer review panel and scored based on the Criteria for Proposal Evaluation identified in the RFP. Scored applications will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief. Final award selections will be made by the Chief. Grant awards will be made by the NRCS National Office after selection of the grantees is made and after the grantee agrees to the terms and conditions of the NRCS Grant document.

(h) *State component.* (1) At the discretion of the Chief, each State Conservationist has the option of

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

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

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

(4) The State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

(5) Applications will be scored by the State Technical Committee, or a subcommittee thereof, based on the national Criteria for Proposal Evaluation published in the CIG RFP. Scored applications will be forwarded to the State Conservationist, who will make the award selections.

(6) In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in paragraph (c)(2) of this section, the State Conservationist in each participating State will determine if and how to provide additional special consideration to underserved groups.

(i) *Grant agreement.* The CCC, through NRCS, will use a grant agreement with selected grantees to document participation in CIG.

(j) *Patents and inventions.* Allocation of rights to patents and inventions shall be in accordance with USDA regulation 7 CFR 3019.36. This regulation provides that small businesses normally may

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

(k) *Violations.* A person found in violation of this section is subject to the provisions contained in 7 CFR part 3015 and related Departmental regulations.

Signed in Washington, DC, on March 19, 2004.

Bruce I. Knight,

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

[FR Doc. 04-6934 Filed 3-26-04; 8:45 am]

BILLING CODE 3410-16-P