

who do not have them. Additional comments expressed concern for the requirement to collect all Tribal member names and numbers within the entity because Indian Tribes entering into EQIP contracts frequently have thousands of members who actually will not receive any portion of the EQIP payment. The rule has been amended to allow the use of individual Tribal enrollment numbers or other unique identification numbers in lieu of a social security number and only for those members who will receive a *pro rata* share of the EQIP payment. Tribal enrollment numbers (TEN) are unique to each individual tribal member. If the Tribal member does not have a TEN, then a social security number or other unique identifier will be used. Tribal member using the TEN identifier for payments received on tribal land will also use the TEN identified for all other EQIP contracts.

Six respondents did not want to be classified as an entity because of the perception that the Adjusted Gross Income (AGI) limitation would apply to Indian Tribes. Under 7 CFR 1400, Indian Tribes are exempt from the AGI qualifications.

Section 1466.25 Contract Modifications and Transfers of Land

The Department received no comments relative to this section of the proposed rule.

Section 1466.26 Contract Violations and Termination

The Department received no comments relative to this section of the proposed rule.

Section 1466.27 Conservation Innovation Grants

This section is reserved for future regulations that address implementation of Conservation Innovation Grants.

Section 1466.30 Appeals

The Department received no comments relative to this section of the proposed rule.

Section 1466.31 Compliance With Regulatory Measures

NRCS received 15 comments supporting using EQIP funds to assist private non-industrial forest land owners develop and prepare Habitat Conservation Plans (HCP). NRCS policy requires that all NRCS assistance must be compliant with all Federal, State and local laws. EQIP does not provide any authority to do otherwise. Therefore private landowners, corporations, State or local governments, or other non-Federal landowners who wish to

conduct activities on their land that might incidentally harm (or “take”) a species listed as endangered or threatened must first obtain an incidental take permit from the U.S. Fish and Wildlife Service. To obtain a permit, the applicant must develop a HCP, designed to offset any harmful effects the proposed activity might have on the species. The HCP process allows development to proceed while promoting listed species conservation. NRCS will provide guidance that will allow technical assistance to be used for the development of a HCP for EQIP assisted activities that adversely affect listed species but costs or fees associated with the permit acquisition will not be an eligible cost. This concept applies to all laws, rules, and regulations that may require remedial actions; the planning can be provided through EQIP assistance but permit fees and costs cannot.

Section 1466.32 Access to Operating Unit

NRCS received 4 comments recommending that an authorized agent of NRCS must first obtain permission before accessing a participant's property. NRCS believes there are numerous cases where a participant may be absent from the property for a lengthy period of time, or the participant is an absentee landowner or tenant who may not be easily contacted. In order to conduct its business in a timely manner in these cases, USDA believes a reasonable effort should be made to contact the participant prior to accessing the property to enable the participant to attend at the same time. The program guidance documents will stipulate that the NRCS must document in the participant's file the efforts made to notify the participant before accessing the operating unit. No change was made in the final rule concerning these comments.

Section 1466.33 Performance Based Upon Advice or Action of Representatives of NRCS

The Department received no comments relative to this section of the proposed rule.

Section 1466.34 Offsets and Assignments

The Department received no comments relative to this section of the proposed rule.

Section 1466.35 Misrepresentation and Scheme or Device

The Department received no comments relative to this section of the proposed rule.

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, Conservation, Natural Resources, Water Resources, Wetlands, Cost-Shares, Payment Rates.

■ Accordingly, part 1466 of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.

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

Subpart B—Contracts and Payments

- 1466.20 Application for contracts and selecting offers from producers.
- 1466.21 Contract requirements.
- 1466.22 Conservation practice operation and maintenance.
- 1466.23 Cost-share rates and incentive payment levels.
- 1466.24 EQIP payments.
- 1466.25 Contract modifications and transfers of land.
- 1466.26 Contract violations and termination.
- 1466.27 Conservation innovation grants.

[Reserved]

Subpart C—General Administration

- 1466.30 Appeals.
- 1466.31 Compliance with regulatory measures.
- 1466.32 Access to operating unit.
- 1466.33 Performance based upon advice or action of representatives of NRCS.
- 1466.34 Offsets and assignments.
- 1466.35 Misrepresentation and scheme or device.

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

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Natural Resources Conservation Service (NRCS) provides assistance to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner and to assist producers in complying with environmental regulations. The purposes of the program are achieved by