

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 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 border. 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 implement 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

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/>.