

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 part 1400, subpart 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.