

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 7 CFR part 12;

(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.