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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1466

[Docket No. NRCS–2014–0007]

RIN 0578–AA62

#### Environmental Quality Incentives Program (EQIP)

**AGENCIES:** Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), U.S. Department of Agriculture (USDA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** An interim rule, with request for comments, was published on December 12, 2014, to implement changes to EQIP that were either required by the Agricultural Act of 2014 (the 2014 Act) or required to implement administrative streamlining improvements and clarifications. This document provides background on the final rule, issues the final rule to make permanent these changes, responds to comments, and makes further adjustments in response to some of the comments received.

**DATES:** Effective Date: This rule is effective May 12, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mark Rose, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265. Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

#### Background

The 2014 Act reauthorized and amended EQIP. EQIP is implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of CCC.

Through EQIP, NRCS incentivizes agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy, and related natural resources on their land. In particular NRCS provides technical and financial assistance to implement conservation practices in a manner that promotes agricultural production, forest management, and environmental quality as compatible goals; optimize conservation benefits; and help agricultural producers meet Federal, State, and local environmental requirements. Conservation benefits are reflected in the differences between anticipated effects of treatment in comparison to existing or benchmark conditions. Differences may be expressed by narrative, quantitative, visual, or other means. Estimated or projected impacts are used as a basis for making informed conservation decisions by applicants and NRCS to help determine which projects to approve for EQIP assistance.

Eligible lands include cropland, grassland, rangeland, pasture, wetlands, nonindustrial private forest land, and other land on which agricultural or forest-related products or livestock are produced and natural resource concerns may be addressed. Participation in the program is voluntary.

On December 12, 2014, the EQIP interim final rule with request for comments was published in the **Federal Register** (79 FR 73953) that amended the EQIP regulations at 7 CFR part 1466 to implement changes made by the 2014 Act. The changes made to the EQIP regulation by the interim rule include:

- Eliminating the requirement that the program contract remain in place for a minimum of 1 year after the last practice is implemented, but keeping the requirement that the contract term not exceed 10 years;
- Consolidating elements of the Wildlife Habitat Incentive Program (WHIP) in light of the 2014 Act repealing the WHIP authority and incorporating its purposes into EQIP;
- Targeting at least five percent of available EQIP funds for wildlife-related

conservation practices for each fiscal year (FY) from 2014 to 2018;

- Replacing the rolling 6-year payment limitation with an established payment limitation for FY 2014 to FY 2018;
  - Requiring Conservation Innovation Grants (CIG) to report no later than Dec 31, 2014, and every 2 years thereafter;
  - Establishing a \$450,000 payment limitation and eliminating payment limit waiver authority.
  - Modifying the special rule for foregone income payments for certain associated management practices and resource concern priorities;
  - Revising availability of advance payments to up to 50 percent for eligible historically underserved participants to purchase material or contract services instead of the previous 30 percent;
  - Providing flexibility for repayment of advance payment if payments are not expended within 90 days;
  - Identifying EQIP as a contributing program authorized to accomplish the purposes of the Regional Conservation Partnership Program (RCPP) (Subtitle I of Title XII of the Food Security Act of 1985, as amended) (Seven percent of EQIP's funding is transferred to facilitate implementation of RCPP); and
  - Adding provisions to target assistance to veteran farmers and ranchers.
- In addition to updating the EQIP regulation to reflect changes made by the 2014 Act, the following administrative changes in the EQIP interim rule were made:
- Incorporating nonindustrial private forest owners and Indian Tribes where appropriate;
  - Making reference to Tribal Conservation Advisory Councils when appropriate;
  - Clarifying the issues where State Technical Committees and Tribal Conservation Advisory Councils provide input;
  - Adjusting definitions to conform to definitions in other NRCS and USDA regulations;
  - Clarifying definitions and requirements for development of Comprehensive Nutrient Management Plans (CNMP) associated with Animal Feeding Operations (AFO);
  - Clarifying outreach activities and adding language that NRCS will ensure outreach is provided so as to not limit producer participation because of size

or type of operation, or production system, including specialty crop and organic production;

- For irrigation and water management practices, allowing an exception to the requirement that land has to have been irrigated 2 of the previous 5 years. The Chief may grant a waiver where there was a loss of access to water due to circumstances beyond the producer's control;
- Changing the contract limitation to correspond with the new payment limitation and clarify that such limitations do not apply to Indian Tribes;
- Revising the rule to clarify when payment rates may be reduced as a result of NRCS entering into a formal agreement with a partner who provides payments to producers participating under general EQIP implementation, *i.e.* outside of RCPP;
- Revising and adding definitions to reflect EQIP authority to encourage development of wildlife habitat;
- Clarifying terminology and procedures associated with the development of payment schedules documenting practice payment rates;
- Simplifying language throughout to improve the regulation's readability; and
- Removing provisions in the rule that relate solely to internal agency administrative procedures that do not impact any rights or responsibilities of participants in the program;

#### Summary of EQIP Comments

The interim final rule had a 60-day comment period ending February 10, 2015. There were received 65 timely submitted responses to the rule, constituting 331 comments. This final rule responds to comments received during the public comment period and incorporates changes as appropriate. In this preamble, the comments have been organized alphabetically by topic. The topics include: Acreage cap, administration, advanced payments, allocations, comprehensive nutrient management plan, conservation activity plans, conservation innovation grants, conservation plan, conservation practices, contract length, contract violation and terminations, definitions, EQIP plan of operations, forestry funding, fund management, grouping and selecting applications, irrigation history, national priorities, payment limitations, program requirements, regional conservation partnership program, regional conservationist approval, regulatory certifications, Transparency Act requirements, technical service providers, veteran farmer or ranchers, and wildlife

funding. Additionally, NRCS received 34 comments that were general in nature, most of which expressed support for the program or how the program has benefitted particular operations. The topics that generated the greatest response include the irrigation history requirement waiver, wildlife funding, and funding for animal feeding operations.

#### 1. Acreage Cap

*Comment:* NRCS received one comment recommending that NRCS establish a maximum acreage cap for EQIP contracts.

*NRCS Response:* NRCS implements EQIP in a size-neutral way. The EQIP statute provides a payment limitation and the regulation further provides for a contract limitation. NRCS does not believe any further limitations are necessary to ensure broad participation on farms and ranches of all sizes. No changes were made in response to this comment.

#### 2. Administration

*Comment:* NRCS received nine comments related to Administration, § 1466.2, most of which were from Conservation Districts. The commenters requested that there be waiver authority for EQIP regulatory provisions for all EQIP implementation, and not limited to RCPP implementation. Several of the comments recommended that NRCS provide greater emphasis to local working groups, identifying that local work groups were removed from the State Technical Committee final rule in 2009. One of the comments also requested that coordination with Indian Tribes be incorporated into the Administration section.

*NRCS Response:* Local working groups remain an integral component of the operations of the State Technical Committee. They were fully incorporated into the State Technical Committee final rule and operating procedures. The comments about local working groups do not relate to EQIP implementation directly, or to the EQIP final rule, and therefore no changes were made.

NRCS limits the ability to waive EQIP regulatory provisions to the authority provided by statute under RCPP, and believes that it is not appropriate to extend such waiver authority further. With its review of project-wide considerations, RCPP provides a structured format for consideration of waiver requests that helps ensure waivers are not granted in an arbitrary fashion. This safeguard is not available for consideration of waiver requests during a general EQIP sign-up. No

changes were made to the regulation in response to the recommendation that the regulatory waiver authority be extended to all EQIP contracts.

NRCS coordinates with Indian Tribes to ensure that program opportunities are available on Tribal lands to Tribal members. NRCS currently identifies this coordination with Indian Tribes, including with the Tribal Conservation Advisory Council (TCAC), the State Technical Committee, and local working groups, in § 1466.2 and throughout the regulation.

NRCS policy related to coordination with Indian Tribes and Tribal members is found at Part 405 of Title 410 of the NRCS General Manual. In its policy, NRCS identifies that an Indian Tribe may designate a TCAC to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The TCAC may:

- Be an existing Tribal committee or department, including a Tribal conservation district;
- Consist of an association of member Tribes that provide direct consultation to NRCS at the State, regional, and national levels; or
- Include a Tribal designee (or designees) from a State Association of Tribal Conservation Districts that represents them and participates as part of the TCAC.

Since coordination with Indian Tribes is established as part of the regulation and NRCS policy, no change was made to the EQIP regulation in response to this comment.

#### 3. Advanced Payments

*Comment:* NRCS received seven comments expressing approval for the additional flexibility available for advanced payments.

*NRCS Response:* NRCS appreciates the positive feedback. The additional flexibility for advanced payments is provided to assist historically underserved producers meet their responsibilities under the EQIP contract. No changes were necessitated by the comments expressed by the respondents.

#### 4. Allocations

*Comment:* NRCS received five comments requesting more transparency in the method used to allocate EQIP resources between States. These comments recommended against the use of the 2011 State Resource Assessment (SRA).

*NRCS Response:* The SRA process has been improved significantly since 2011 and now allows States to leverage national, State, and local data to present funding needs and demand in a flexible

and transparent manner. At the national level, this process enables NRCS to focus funding on the highest priority resource needs across all States. The resulting annual allocation reflects State-demonstrated need and available funding. In addition, NRCS maintains the flexibility to adjust annual allocations in order to address emerging issues. For example, in FY 2014, NRCS was able to send several States severely impacted by drought an additional \$20 million above their annual allocation in order to provide critical assistance to the impacted producers.

#### 5. Animal Feeding Operations

*Comment:* NRCS received nine comments expressing concern about using EQIP funds for new or expanding Confined Animal Feeding Operations (CAFOs). Some comments recommended that NRCS require a CAFO applicant to complete a CNMP as a prerequisite to receiving any EQIP funds to build a waste storage or treatment facility. Other comments recommended that NRCS undertake a full environmental review of the impact of EQIP CAFO funding.

*NRCS Response:* Section 1240E(a)(3) of the Food Security Act of 1985 (1985 Act), as amended, authorizes payments for AFOs provided the producer submits a plan of operations that provides for development and implementation of a CNMP. In the interim rule, NRCS revised the definition for AFO and CNMP, and revised § 1466.7, EQIP Plan of Operations, to clarify that if an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period. This requirement is further mirrored at § 1466.21, Contract Requirements, to state that a CNMP should be implemented when an EQIP contract includes an animal waste facility on an AFO. NRCS currently provides EQIP assistance for existing and expanding CAFO's in accordance with statutory regulations that require EQIP to provide assistance in situations where resource concerns currently exist.

As provided by statute and rule, NRCS already requires development of a CNMP as a condition to implement waste facility practices. Since some practices must be implemented prior to others, it is infeasible to require full implementation of a CNMP as a precondition for EQIP assistance for applicable practices.

As identified above and in the regulatory certifications, two respondents recommended that NRCS

undertake an environmental analysis of the effects of providing EQIP assistance to CAFOs. NRCS has and will continue to conduct an environmental evaluation before providing EQIP financial assistance to any producer to ensure EQIP financial assistance does not result in significant adverse impacts to the quality of the human environment. The environmental evaluation is used to aid NRCS in compliance with the National Environmental Policy Act (NEPA) and helps NRCS determine the need for an environmental analysis (EA) or environmental impact statement (EIS) when the impacts of the proposed action do not fall within a categorical exclusion or have not already been addressed in the EQIP programmatic EA.

#### 6. Comprehensive Nutrient Management Plan (CNMP)

*Comment:* NRCS received three comments recommending that participants develop a CNMP prior to funding waste storage practices.

*NRCS Response:* The EQIP regulation at § 1466.7, EQIP Plan of Operations, requires a CNMP to be implemented if an EQIP plan of operations includes an animal waste storage on an AFO. This requirement is further mirrored in § 1466.21, Contract Requirements, to state that a CNMP will be implemented when an EQIP contract includes an animal waste facility on an AFO. No changes were made to the EQIP regulations in response to these comments.

#### 7. Conservation Activity Plans

*Comment:* NRCS received one comment, disagreeing with the NRCS technical policy determination that Conservation Activity Plan (CAP) 142 on forest land must be approved by a Technical Service Provider (TSP) certified for forestry planning.

*NRCS Response:* Section 1240E of the EQIP statute requires that EQIP payments for a practice related to forest land must be consistent with the provisions of a "forest management plan that is approved by the Secretary." This requirement was incorporated into the EQIP interim rule at 7 CFR 1466.7(e).

CAP 142 is a wildlife habitat management plan. Under the TSP provisions at 7 CFR part 652, a TSP hired by a program participant may utilize the services of another TSP to provide specific technical services or expertise needed by the participant. However, it remains the responsibility of the TSP hired by the participant to ensure that any technical services provided to them meets NRCS standards and specifications, and are consistent

with the Certification Agreement the TSP entered into with NRCS at the time of Certification. Therefore, on a project-by-project basis, when CAP 142 on forested lands identifies the use of complex forestry conservation practice standards, such as Forest Stand Improvement (FSI), the plan must be approved by a TSP that also has been certified as having the requisite forestry technical skills. Other CAP 142 wildlife habitat management plans may not include forestry practices as complicated as FSI. Depending on the geographic location and the particular practices being planned and implemented, NRCS maintains the flexibility to determine when CAP 142 projects on forested lands need to be approved by TSPs who also have been certified for particular forestry conservation practices. As a result, no changes were made in response to this comment.

#### 8. Conservation Innovation Grants (CIG)

*Comment:* NRCS received six comments concerning CIG, three of which were recommendations. In particular, one commenter recommended that the NRCS State Conservationist, in consultation with the State Technical Committee, should be able to identify other resource concerns for State CIG projects and not be limited to either the national resource concerns or a subset of those concerns. Another commenter recommended that NRCS aggressively promote the on-farm research and development option, including a special focus on and significant funding for projects of this nature in each year's CIG announcement of program funding (APF). A third commenter recommended that NRCS continue to publish the APF in the **Federal Register**.

*NRCS Response:* The EQIP regulation currently allows flexibility for NRCS to implement State-level CIGs, with resource priorities identified by the State Conservationist in consultation with the State Technical Committee. In particular, funding availability, application, and submission information for State competition are announced through public notice ([Grants.gov](http://Grants.gov)) separately from the national notice. The State Conservationist determines the State component categories to be offered annually. The regulation already addresses the comment regarding State identification of CIG priorities and no changes are needed.

For the first time the 2014 Act included language to allow CIG to fund on-farm research and development of technologies and approaches, and this

authority was incorporated into the EQIP regulation. NRCS now provides support through CIG to on-farm conservation research, pilot projects, and field demonstrations of promising approaches or technologies. CIG applications should demonstrate the use of innovative approaches and technologies to leverage the Federal investment in environmental enhancement and protection, in conjunction with agricultural production. NRCS appreciates the comment recommending vigorous support for these efforts, but no further change is needed to the regulation in order for NRCS to provide such support.

NRCS supports the broad dissemination of the public announcement of national CIG competition. The CIG APF contains guidance on how to apply for the grants competition. NRCS, at one time, used the **Federal Register** for CIG announcements, but removed the requirement in the interim rule in order to speed up and simplify the process of making funding announcements. CIG opportunities are now advertised through the NRCS Web site and *Grants.gov*. No changes were made in response to this recommendation given the wide availability of notice about the CIG APF through other avenues.

#### 9. Conservation Plan

*Comment:* NRCS received one comment recommending that a comprehensive conservation plan should be required prior to obtaining assistance.

*NRCS Response:* NRCS supports and believes that comprehensive conservation planning is a valuable conservation tool for producers, but does not agree it should make EQIP assistance contingent upon an applicant having obtained a comprehensive conservation plan. Section 1240F of the EQIP statute requires NRCS to assist producers by “providing payments for developing and implementing 1 or more practices, as appropriate” and “providing the producer with information and training to aid in implementation of the plan.” Given that the statute provides the flexibility for NRCS to provide EQIP assistance to implement only one practice, NRCS believes that the intent is for the planning to be similarly flexible to meet the current conservation needs of its participants. No changes were made in response to this comment.

#### 10. Conservation Practices

*Comment:* NRCS received seven comments regarding conservation practices, six of which were

recommendations. A couple of the commenters recommended that NRCS allow treatment to be done on the highest priority soils or ecological sites within a Conservation Management Unit, without making the rest of the land unit ineligible for future treatments. One commenter recommended a review and expansion of available conservation practices to better serve historically underserved, veteran, organic, small farmer, and other diverse producers. One commenter recommended adding to the regulation the requirement that financial assistance only be made for conservation practices that address the Priority Natural Resource Concerns identified in the EQIP Plan of Operations. One commenter recommended that NRCS annually consult with the State fish and wildlife agencies and the U.S. Fish and Wildlife Service (FWS).

*NRCS Response:* NRCS policy authorizes repeated implementation of conservation practices on land where the subsequent implementation of the practice will significantly improve the level of treatment addressing a resource concern. EQIP assistance is provided to the highest priority applications based upon the ranking criteria developed in consultation with the State Technical Committees. FWS and State fish and wildlife agencies are members of the NRCS State Technical Committee and therefore do not need to be identified separately in the EQIP regulation. NRCS continually reviews its conservation practices and whether NRCS assistance is able to address the resource concerns that the diversity of producers may have. No changes were needed in response to these comments.

#### 11. Contract Length

*Comment:* NRCS received one comment recommending that the maximum contract length be reduced from 10 years to 5 years.

*NRCS Response:* Section 1240B of the EQIP statute allows an EQIP contract to have a 10-year duration. Congress has consistently retained this contract term in statute, recognizing the need for variation in contract duration. NRCS believes it must provide the flexibility authorized under the statute and that there are situations where implementation of conservation practices over a longer contract period is needed to address the resource concern. Therefore, no changes were made to the regulation in response to this comment.

In addition, a ranking criterion was added at 7 CFR 1466.20(b) to provide priority to applicants who indicate a willingness to complete all conservation

practices in an expedited manner. NRCS identified that the purpose of this ranking criterion was to further statutory intent and to ensure timely and effective conservation improvements. NRCS continues to support the policy behind this regulation. NRCS implements this regulatory provision during the ranking process for applicants that indicate a willingness to implement all conservation practices within 3 years. While the statute authorizes contracts can be for up to 10 years in duration, NRCS implements this criterion for those funding pools where the nature and type of the resource concern to be addressed and practices applied do not require longer term conservation treatment, such as with applications for exclusion fences or other applications with comparatively low application costs. Additionally, NRCS recognizes that this criterion may not be appropriate to implement in funding pools set aside for historically underserved or limited resource producers, or in cases where infrastructure construction is necessary, as financially these producers or projects may need a longer implementation schedule.

#### 12. Contract Violation and Terminations

*Comment:* NRCS received seven comments opposed to the removal of the specific reference to conservation districts in EQIP contract termination decisions.

*NRCS Response:* The EQIP interim rule removed the provision at 7 CFR 1466.26 which identified that NRCS may consult with conservation districts in EQIP contract termination decisions. NRCS removed this section due to the limitations on the disclosure of certain types of information provided by an agricultural producer under Section 1619 of the Food, Conservation, and Energy Act of 2008 (2008 Act). NRCS will continue to work closely with its conservation district partners in the implementation of EQIP and its other conservation programs. No changes were made in response to these comments.

The EQIP contract violation provisions (7 CFR 1466.25) address circumstances in which a participant violates their EQIP contract by losing control of the land under contract. NRCS may allow a participant to transfer the EQIP contract rights to an eligible producer provided the participant notifies NRCS of the loss of control within the time specified in the contract, NRCS determines that the new producer is eligible to participate in the program, and the transfer of the contract

rights does not interfere with meeting program objectives.

Given that the new producer is not a party to the EQIP contract until NRCS approves the contract transfer and adds the new producer to the contract, a new producer may not be aware they are not eligible for payment until the contract transfer has been approved by NRCS. In particular, any practices that a new producer implements prior to NRCS approval of the contract transfer is not eligible for payment because they are not a program participant at the time of implementation. Changes to 7 CFR 1466.25 clarify a participant's responsibility to notify NRCS about any loss of control of land, the timing of when a new producer must be identified, the timing of when a new producer becomes eligible for payment, and the circumstances when partial or full termination of the contract may be appropriate. These changes do not affect the substance of the EQIP regulatory and policy framework regarding land transfers.

### 13. Definitions

*Comment:* NRCS received 27 comments related to the definitions found at 7 CFR 1466.3 of the EQIP interim rule. Amongst these comments, there were a few comments regarding how historic use areas by Indian Tribes should be considered as areas of an agricultural operation.

*NRCS Response:* Most of the comments were from the same respondent, and related to suggested edits to the wildlife definitions. NRCS recognizes the unique status that Tribal lands and treaties have and will work with Tribal entities to ensure that agricultural operations are properly delineated. These comments did not require any changes to the regulation.

### 14. EQIP Plan of Operations

*Comment:* NRCS received 11 comments related to 7 CFR 1466.7, EQIP Plan of Operations. The comments related to CNMPs have been discussed above. Other comments recommended that the regulation specify that all conservation practices in the EQIP plan of operations must be approved by NRCS or an NRCS-approved TSP with appropriate job approval authority in accordance with the applicable NRCS Conservation Practice Standards in the Field Office Technical Guide. Some comments also recommended that the EQIP plan of operations identify the specific resource concerns to be addressed, which currently is not included.

*NRCS Response:* NRCS currently requires that the EQIP plan of

operations be approved by NRCS or a certified TSP, and these comments do not require any changes be made to the EQIP regulation. The EQIP plan of operations is intended to inform producers what practices are included in the contract, the payment rate for the practice, and when the practice must be installed. Information related to the resource concerns being addressed are included in the conservation plan folder, the environmental evaluation documentation (NRCS-CPA-52), and are the basis for many of the program ranking criteria. As such, it is not necessary to duplicate this information in the EQIP Plan of Operations. No changes were made in response to these comments.

### 15. Forestry Funding

*Comment:* NRCS received one comment to the EQIP interim rule, recommending that at least 5 percent of EQIP funds be dedicated to forestry practices.

*NRCS Response:* Greater than 5 percent of EQIP funds have been dedicated to forestry practices following the increased emphasis upon providing assistance to non-industrial private forestlands since the 2008 Act. No changes are needed in order to meet the respondent's recommendations. However, NRCS notes that two of its regulatory provisions may inadvertently hinder participation by forest landowners. Namely, §§ 1466.7(e) and 1466.21(b)(3)(v) require that if an EQIP plan of operations includes conservation practices that address forest-land-related resource concerns, the participant must develop and implement a forest management plan by the end of the contract period. Often, a forestry management plan extends beyond 10 years and thus beyond the maximum duration of an EQIP contract. As such, it may not be feasible for a forestry landowner to implement fully the forestry management plan during the EQIP contract term. Unlike a CNMP that covers a specific type of operation with practices that can be more immediately implemented, a forestry management plan deals with managing a landscape which may require several years for the forest to respond to a treatment before another can be applied. Therefore, the provisions at §§ 1466.7(e) and 1466.21(b)(3)(v) are modified to require a participant to implement conservation practices consistent with an approved forest management plan if the EQIP plan of operations addresses forest-land-related resource concerns.

### 16. Fund Management

*Comment:* NRCS received one recommendation that it dedicate a specific amount of EQIP funding for specific categories (cover crops, CAFOs, etc.) to avoid situations where NRCS and producers are unsure of the level of funding available. The commenter expressed that this creates situations where producers scramble to get their paperwork submitted to meet deadlines only to learn later that they will not be funded.

*NRCS Response:* NRCS identifies the resource concerns that will receive priority through the posting of its ranking criteria and associated application deadlines, including special announcements of initiative funding. NRCS believes that this provides producers with information necessary to know what activities will receive funding priority. EQIP is only able to fund about 37 percent of the eligible applications it receives. No changes were made in response to these comments.

### 17. Grouping and Ranking Applications

*Comment:* NRCS received 15 comments about ranking and 5 comments about grouping applications. The ranking recommendations included that NRCS should:

- Have no ranking;
- Streamline the application process and ranking;
- Not prioritize applications based upon a producer's ability to expedite practice implementation;
- Prioritize grass-based systems over AFOs;
- Encourage transition to more sustainable practices;
- Prioritize greenhouse gas reduction and carbon sequestration; and
- Include consistency with Tribal law as well as State law related to irrigation practice provisions.

As to the grouping of applications, one commenter felt that beginning farmers and ranchers received too much emphasis. One commenter felt that there were too many funding pools, while another recommended that States with at-risk species have more funding pools. One commenter recommended that operations compete against operations of similar sizes, while another commenter recommended prohibiting separate funding pools for CAFOs and instead encourage grazing plans for livestock.

*NRCS Response:* NRCS accepts EQIP applications on a continuous basis, but establishes application "cut-off" or submission deadline dates for evaluation and ranking of eligible

applications. Depending upon annual funding levels, NRCS will allocate specific amounts of EQIP funding to meet legislative requirements, address certain national priorities, and also make funds available for NRCS State Conservationists to help address resource priorities identified by State Technical Committees. These priorities are then incorporated into ranking criteria, based upon the factors identified in statute and in § 1466.20 of the EQIP rule. In response to the request to streamline the application and ranking process, for many years NRCS has utilized screening factors as part of its evaluation and ranking of priority projects. To clarify that these screening factors are part of the ranking process, slight adjustments have been made in § 1466.20(b) to identify how these screening factors are used as part of the evaluation and selection of projects.

In evaluating EQIP applications, NRCS strives to obtain input from Tribes, States, and other affected constituents through seeking advice from the State Technical Committees, TCACs, and local working groups. For water conservation or irrigation-related practices, TCACs routinely have the opportunity to identify issues, including those that raise concerns related to Tribal laws, in order to advise NRCS on more effective ways to deliver programs and on the application process. While not explicitly stated in the regulation, NRCS believes that this advisory process with State Technical Committees and TCACs is considerate of and consistent with applicable State and Tribal laws.

Additionally, in its ranking, NRCS groups applications to the greatest extent possible by similar crop, forestry, or livestock operations for evaluation purposes or otherwise evaluating each application relative to other applications of similar agricultural operations. NRCS establishes a funding pool for beginning farmer and ranchers in accordance with statutory set-aside requirements. Subaccounts may also be developed to address a specific resource concern, geographic area, or type of agricultural operation, such as addressing habitat needs of at-risk species. However, to promote efficient and timely delivery of program assistance, NRCS policy encourages States to limit creating subaccounts in ProTracts to the minimum number needed to effectively rank and approve applications. EQIP policy currently addresses the respondents concerns regarding grouping applications and no changes were made to the regulation.

### 18. Irrigation History

*Comment:* NRCS received 73 comments related to the irrigation history requirement and the criteria that NRCS should consider for waiving it. The following summarizes the general content of these comments, recommending:

- Support for the new waiver provision;
- The requirements for the waiver be less restrictive;
- That Indian Tribes be exempt from the irrigation history requirement altogether, or at least not subject to the agricultural history waiver criterion, provided the Tribe has a secured legal water right;
- The irrigation history requirement be completely removed;
- All producers, not just limited resource or socially disadvantaged producers, be eligible for a waiver; and
- Specific recommendations related to the waiver criteria, such as:
  - Removing the proposed acreage limit;
  - Removing the exclusion of land that has been subject to a water shortage;
  - Prohibiting waivers on native prairie and grasslands with no prior cropping history;
  - Clarifying the types of practices that are considered irrigation practices;
  - Clarifying whether the acreage limitation is per operation or per year; and
  - Considering impacts to wildlife when implementing irrigation practices.

*NRCS Response:* NRCS proposed several criteria and requested public comments on the criteria that will be used to determine whether to waive the irrigation history requirement, including whether:

- The waiver provision should be limited to applicants who are limited resource or socially disadvantaged producers (including Indian Tribal producers). Beginning farmers and ranchers were excluded from this consideration;
- The irrigation practices are necessary for the adoption of a sustainable agricultural production method, such as the adoption of cover crops to improve the soil condition;
- The land has been in active agriculture (cropped, hayed, or grazed) for 4 of the last 6 years;
- The waiver would adversely impact limited surface or groundwater supplies; and
- An acreage limitation should be applied, such as 50 acres per producer or 200 acres per Tribe.

In order to implement the waiver provision, NRCS developed and issued

program policy at Title 440 Conservation Programs Manual, Part 515, Section 515.52, reflecting all criteria in the preamble of the EQIP rule except for the acreage limitation. NRCS believes that the criteria incorporated into policy ensure that program participants will be able to obtain access to EQIP to address resource concerns in a manner that does not adversely affect available water supplies. NRCS will continue to evaluate the utility of these criteria as it reviews actual waiver requests and may make adjustments based upon the experience obtained from actual implementation of the waiver provision.

### 19. National Priorities

*Comment:* NRCS received one comment on national priorities, recommending broadening national priority related to threatened and endangered species under the Endangered Species Act.

*NRCS Response:* As identified in the EQIP regulation, the national priority is not limited to Federally-listed threatened and endangered species, but identifies the promotion of habitat conservation for “at-risk” species habitat conservation. “At-risk” species include any plant or animal listed as threatened or endangered; proposed or a candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or TCAC, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention. No changes were made in response to this recommendation.

### 20. Outreach Activities

*Comment:* NRCS received six comments on outreach, five of which expressed approval for NRCS' current efforts with respect to historically underserved producers and recommending that NRCS maintain and expand outreach to these producers. One commenter recommended increasing participation among forestry landowners.

*NRCS Response:* NRCS will continue to expand its outreach to historically underserved producers.

NRCS is working in coordination with other USDA and Federal agencies to ensure that we are consistent with our outreach approach to serve historically underserved producers in rural and urban areas. NRCS is collaborating and

working cooperatively with a variety of community-based organizations to ensure all customers receive high quality service and the information necessary to fully participate in all of its programs and services. For example, most recently, NRCS initiated a major partnership project in Alabama, North Carolina, and South Carolina to assist African American forest landowners in adopting and applying sustainable forest management practices to improve the value of their forestlands. Due to the success of this partnership, NRCS is looking to expand this project into Arkansas, Georgia, Mississippi, Virginia, and Indian Country.

#### 21. Payment Limitations

*Comment:* NRCS received eight comments concerning payment limitations, five of which recommending a separate payment limitation lower than the current statutory levels.

*NRCS Response:* Section 1240G of the EQIP statute specifies a \$450,000 payment limitation for persons and legal entities. The EQIP statute does not provide authority to mandate a lower payment limitation. No changes were made to the regulation in response to this comment.

#### 22. Program Requirements

*Comment:* NRCS received 13 comments regarding various program requirements, 11 of which made specific recommendations including:

- Higher payment rates for historically underserved producers with one commenter expressing disagreement for higher payment rates, while another commenter expressed support for veteran farmers or ranchers receiving a higher payment rate;
- Payment schedule scenarios, with two commenters recommending that payment scenarios be published on NRCS State Web sites, one commenter recommending that NRCS address disparities between small or large operations of payments for management practices that are based on number of acres, while another commenter recommending that NRCS have additional organic production scenarios; and
- Initiatives, with the commenter requesting clarification about when NRCS may reduce the level of EQIP assistance provided due to a contribution by a partnering entity.

*NRCS Response:* NRCS will continue to encourage enrollment by historically underserved producers through statutory tools such as higher payment rates and funding pool set asides, and programmatic policy emphasis and

outreach efforts. NRCS will consider the recommendations regarding its payment schedules in its fiscal year 2016 and future payment schedule development efforts. Section 1466.23(b)(4) of the EQIP regulation requires NRCS to adjust program payment percentages to a participant when NRCS enters into a formal agreement with partners who also provide financial support to the participant to help implement program initiatives. This adjustment ensures coordination of conservation investment under formal partnership agreements to encourage the voluntary adoption of practices and not as a windfall to producers. This adjustment does not apply to situations where NRCS and other conservation organizations are independently providing assistance to a producer.

#### 23. Regional Conservation Partnership Program (RCPP)

*Comment:* NRCS received three comments on RCPP. The commenters recommended that RCPP requirements be subject to public comment, that NRCS explain the contribution requirement under RCPP, and identify in the EQIP regulation that EQIP is a covered program under RCPP.

*NRCS Response:* NRCS has held numerous stakeholder meetings across the country to obtain input concerning RCPP procedures and requirements, and incorporates this feedback into the APF. The RCPP statute requires partners to contribute a significant portion of the overall costs of the project. This contribution of resources is reflected in the partnership agreement entered into between NRCS and a partner. The overall cost includes all direct and indirect costs associated with implementation, from NRCS and partner(s). Partners may include funds they have received from other Federal sources as part of their contribution to the project, provided they submit a written commitment from the Federal agency confirming such funds can be used in conjunction with NRCS funds. NRCS provides greater priority to applicants that are able to contribute at least 50 percent of the resources needed to implement a project. A minor change has been made to the EQIP final rule to clarify that EQIP is a covered program under RCPP.

#### 24. Regional Conservationist Approval

*Comment:* NRCS received seven comments on the removal of the requirement that the Regional Conservationist approve contracts obligating funds over \$150,000. Three respondents expressed support for the

removal, while four recommended that NRCS re-institute the requirement.

*NRCS Response:* The requirement concerning the approval of contracts by the Regional Conservationist has been removed from the regulation as it is an internal administrative matter. NRCS bases its internal review requirements in a manner that balances ensuring financial integrity with administrative efficiency. NRCS adjusts these requirements based upon findings from its quality assurance reviews. No changes were made to the regulation in response to these recommendations.

#### 25. Regulatory Certifications

*Comment:* NRCS received 13 comments related to various regulatory certifications that appeared in the preamble of the interim rule. Namely, five commenters stated that consultation was required under Executive Order 13175 since they believe that EQIP imposes substantial costs on Tribal governments associated with environmental and cultural resource compliance; three comments stated that Executive Order 13132 required NRCS to coordinate with Conservation Districts, as well as other State and local governments, prior to publishing the EQIP interim rule; and five commenters stated NRCS failed to meet the requirements of Executive Order 13563 to improve coordination across agencies to reduce costs and simplify rules.

*NRCS Response:* NRCS met its responsibilities under Executive Orders 13175, 13132, and 13563. Section 5 of Executive Order 13175 provides that an agency should not promulgate any regulation that imposes substantial direct compliance costs on Tribal governments that is not required by statute unless funds necessary to pay the direct costs incurred by the Tribal government or the Tribe in complying with the regulation are provided by the Federal government; or alternatively, the agency, prior to the formal promulgation of the regulation, consulted with Tribal officials early in the process of developing the proposed regulation.

While Indian Tribes and their members are eligible to participate in EQIP, such participation is voluntary and does not mandate compliance costs on the part of the Tribe. Additionally, in response to the 2014 Act enactment, NRCS developed and implemented an outreach plan to obtain meaningful input from Indian Tribes regarding all NRCS conservation programs, including EQIP. NRCS consultation policies related to Executive Order 13175 are currently contained in the NRCS General Manual (GM) at 410 GM Part

405, 180 GM Parts 401 and 404, and 420 GM Part 401. For ongoing NRCS program activities, NRCS State Conservationists have primary responsibility for engaging with Indian Tribes and ensuring that NRCS' Tribal consultation responsibilities have been met.

Executive Order 13132 governs how agencies should develop policies that have federalism implications. Under Executive Order 13132, "policies that have federalism implications" refers to regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EQIP is a voluntary program to provide assistance to producers of eligible lands. As stated in the EQIP interim rule preamble, EQIP does not have a substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities.

Section 2 of Executive Order 13563 requires that regulations be adopted through a process that involves public participation, and to the extent feasible and consistent with law, the open exchange of information and perspectives among State, local, and Tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole. Section 1246 of the 1985 Act requires publication of the EQIP regulation as an interim rule with an opportunity for public comment. The EQIP interim rule published on December 12, 2014, included a 60-day public comment period, during which the comments regarding Executive Order 13563 were received by NRCS.

#### 26. Transparency Act Requirements

*Comment:* NRCS received five comments expressing concern about the applicability of the Federal Funding Accountability and Transparency Act (Transparency Act) requirements to EQIP contracts and the impact failure to comply with these requirements have upon agricultural producers.

*NRCS Response:* The Office of Management and Budget (OMB) regulations at 2 CFR parts 25 and 170 implement the Transparency Act and are government-wide requirements. The Transparency Act regulations apply to awards of financial assistance to non-Federal entities. EQIP assistance is financial assistance, thus the Transparency Act requirements apply to its implementation of awards to non-Federal entities. No changes were made in response to these comments.

#### 27. Technical Service Providers (TSPs)

*Comment:* NRCS received one comment expressing approval for the utilization of TSPs.

*NRCS Response:* NRCS appreciates the comment and will continue to encourage the utilization of TSPs in the implementation of EQIP. No changes were necessitated by this comment.

#### 28. Veteran Farmer or Ranchers

*Comment:* NRCS received five comments expressing support for the priority provided to veteran farmers and ranchers.

*NRCS Response:* NRCS appreciates the comment and will continue to encourage participation in EQIP by veteran farmers or ranchers. No changes were necessitated by this comment.

#### 29. Wildlife Funding

*Comment:* NRCS received 16 comments expressing concern that 5 percent was the minimum funding available for wildlife-focused activities and that wildlife is not being partitioned clearly to demonstrate an additive effect. Some commenters recommended that wildlife funding be tracked based on ranking of resource concerns and not by targeting specific practices. Others recommended that only those 16 conservation practice standards that have fish and wildlife as a primary purpose should be used to track the wildlife fund requirement.

*NRCS Response:* The 2014 Act repealed WHIP and incorporated its purposes into EQIP. Under the 2014 Act, at least 5 percent of EQIP assistance must be targeted towards conservation practices with a specific purpose related to wildlife habitat. Since this is an administrative requirement, NRCS did not include it in the EQIP regulation, but discussed in the preamble of the interim rule how it will meet the requirement. In particular, NRCS identified that it will track its compliance with this requirement by identifying those conservation practices where wildlife habitat is the primary purpose. Out of more than 160 existing conservation practice standards, 16 have wildlife habitat as a primary purpose, in addition to approximately 45 standards that are often used to benefit wildlife. The preamble also identified that in certain situations, such as wildlife-focused initiatives, other practices may also be tracked where the practices are designed to achieve specific wildlife objectives.

Given the statutory language, it is appropriate to track both the 16 wildlife-specific practices and, in wildlife-focused initiatives, the 45

standards that are utilized to benefit wildlife. No changes were made to the regulation in response to these comments.

#### Regulatory Certifications

##### *Executive Order 12866 and 13563*

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB designated this final rule a significant regulatory action. The administrative record is available for public inspection at NRCS National Headquarters located at 1400 Independence Avenue Southwest, South Building, Room 5831, Washington, DC 20250-2890. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications section of this preamble, and a copy of the analysis is available upon request from the Director of NRCS' Financial Assistance Programs Division or electronically at: <http://www.nrcs.usda.gov/programs/eqip/> under the EQIP Rules and Notices with Supporting Documents title.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Regardless, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation is incentive-based, and therefore only impacts those who participate voluntarily in the program. Small entity



applicants will not be affected to a greater extent than large entity applicants.

#### *Congressional Review Act*

Section 1246(c) of the 1985 Act, as amended by section 2608 of the 2014 Act, enables the Secretary of Agriculture to use the authority granted in section 808(2) of Title 5 of the United States Code to forego the Congressional Review Act's 60-day Congressional review, which delays the effective date of major regulations, if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs, authorized or amended under Title 7 of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly prior to planting season. For these reasons, this rule is effective upon publication in the **Federal Register**.

#### *Environmental Analysis*

NRCS prepared a programmatic EA in association with the EQIP rulemaking to aid in its compliance with NEPA when expending EQIP funds in implementing site-specific actions (40 CFR 1501.3(b)). As a result of the analysis, the Chief of NRCS determined that there will not be a significant impact to the human environment as a result of the changes implemented by this rule; therefore, an EIS was not required (40 CFR 1508.13). Only one comment was received on the EA. The commenter expressed that EQIP has not allowed for seed producers to adequately respond to programs that are announced after the seed production season and requested communication improvements. This comment did not provide new information that is relevant to environmental concerns or that bears on the proposed action or its impacts that warrants supplementing or revising the EQIP EA and Finding of No Significant Impact.

Two additional letters were received providing comments on the interim final rule recommending that NRCS undertake an EA of the effects of providing EQIP assistance to CAFOs. NRCS considered this input and determined it lacks discretion on whether to provide assistance to existing or expanding CAFOs. NRCS made this determination based on its review of the EQIP legislative history, the purposes of EQIP—which include assisting producers to meet regulatory

requirements related to soil and water quality—and the fact that in the Farm Security and Rural Investment Act of 2002, Congress removed the restriction on providing financial assistance to large confined livestock operations to construct animal waste management facilities and required NRCS to direct 60 percent of its EQIP assistance to livestock producers. NRCS has, and will continue to conduct an environmental evaluation before providing EQIP financial assistance to any producer to determine the need for an EA or EIS. NRCS regulations in 7 CFR part 652 define the environmental evaluation as the part of the NRCS planning process that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. The environmental evaluation is used to determine the need for an EA or EIS, and aids in the consideration of alternatives and in the identification of available resources when an EA or EIS is not required (7 CFR 650.4(c)).

NRCS will also use the environmental evaluation to evaluate the environmental effects of specific requests to grant irrigation waivers. It is not possible to meaningfully analyze the effects of these waivers at a national level because of site-specific factors. NRCS would have to speculate as to the types of requests that might be received and granted, and NEPA does not require analysis of speculative actions. As a result, the programmatic EA prepared to identify the effects of the EQIP rule does not analyze the effects of waiver requests.

A copy of the EA and FONSI may be obtained from the following Web site: <http://www.nrcs.usda.gov/ea>. A hard copy may also be obtained in any of the following ways: (1) Send an email to [andree.duvarney@wdc.usda.gov](mailto:andree.duvarney@wdc.usda.gov) with "Request for EA" in the subject line, or (2) mail a written request to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Post Office Box 2890, Washington, DC 20013–2890.

#### *Civil Rights Impact Analysis*

NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Through its Civil Rights Impact Analysis, NRCS determined that the final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The national target of setting aside 5 percent of EQIP funds for socially disadvantaged farmers or ranchers, and an additional 5 percent of

EQIP funds for beginning farmers or ranchers, as well as prioritizing veterans that are socially disadvantaged farmers or ranchers and beginning farmer or ranchers is expected to increase participation among these groups.

The Civil Rights Impact Analysis indicates that producers who are members of the protected groups have participated in NRCS conservation programs at the same rates as other producers. Extrapolating from historical participation data, it is reasonable to conclude that EQIP will continue to be administered in a nondiscriminatory manner. Outreach and communication strategies are in place to ensure all producers are provided the same information, enabling them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. Therefore, this final rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

#### *Paperwork Reduction Act*

Section 1246 of the 1985 Act, as amended by the 2014 Act, requires that implementation of programs authorized by Title 7 of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

#### *Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

#### *Executive Order 13175*

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that may have substantial direct effects on one or more Indian Tribes, the relationship between the Federal

government and Indian Tribes, or the distribution of power and responsibilities between the Federal government and Indian Tribes. NRCS has assessed the impact of this final rule on Indian Tribes and determined that Tribal consultation under Executive Order 13175 does not apply. However, NRCS believes that consultation with Tribes is critical to ensuring that the program is administered in a fair and equitable manner. Therefore, NRCS has reviewed letters and comments submitted by and on behalf of Tribes during the public comment period leading to an additional public presentation and information gathering on the final rule with Tribes, Tribal representatives, and Tribal members on December 7th in Las Vegas, Nevada. NRCS made several changes to the final rule to address concerns raised by Tribes and Tribal representatives throughout the NRCS outreach and collaboration process. NRCS developed and implemented an outreach and collaboration plan to use while developing its policy regarding the 2014 Act. If a Tribe requests consultation, NRCS will work at the appropriate local, State, or national level, including with the USDA Office of Tribal Relations, to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

#### *Unfunded Mandates Reform Act of 1995*

Title 2 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with “Federal mandates” that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title 2 of UMRA, for State, local, and Tribal governments or the private sector. Therefore, a statement under section 202 of UMRA is not required.

#### *Executive Order 13132*

NRCS has considered this final rule in accordance with Executive Order 13132, issued August 4, 1999, and has

determined that the final rule conforms with the Federalism principles set out in this Executive Order, would not impose any compliance costs on the States, and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this final rule does not have Federalism implications.

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

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of \$100,000,000 in 1994 dollars, and therefore, is not a major regulation. As such, a risk analysis was not conducted.

#### *Executive Order 13211*

This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

#### *Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006*

OMB published two regulations, codified at 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance in complying with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and sub-recipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier sub-awards and executive compensation under those awards.

The regulations at 2 CFR part 25 and 2 CFR part 170 apply to EQIP financial assistance provided to entities and, therefore, these registration and reporting requirements will continue to include in the requisite provisions as

part of EQIP financial assistance contracts.

#### **Regulatory Impact Analysis—Executive Summary**

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact Analysis (RIA) of EQIP as pursuant to the changes of the 2014 Act. On December 12, 2014, an interim rule and an accompanying RIA, with request for comments, was published which implemented changes to EQIP necessitated by the enactment of the 2014 Act or required to implement administrative clarifications and streamlining improvements. NRCS received 331 comments from 65 respondents to the interim rule. NRCS received no comments on the RIA. The final rule makes permanent the changes proposed in the interim rule along with some minor adjustments based on public comments. NRCS determined that these minor adjustments would not significantly alter the RIA.

In considering alternatives for implementing EQIP, USDA followed the legislative intent to maximize beneficial conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal, State, and Tribal environmental requirements. Because EQIP is a voluntary program, the program will not impose any obligation or burden upon agricultural producers who choose not to participate.

EQIP has been authorized by the Congress in the 2014 Farm Bill at \$8 billion over the 5-year period beginning in FY 2014 and proceeding through 2018, with annual amounts of \$1.35 billion in FY 2014, \$1.60 billion in FY 2015, \$1.65 billion in FY 2016, \$1.65 billion in FY 2017, and \$1.75 billion in FY 2018. EQIP and WHIP had been previously authorized under the 2008 Act with annual amounts of \$1.32 billion for FY 2008, \$1.37 billion in FY 2009, \$1.55 billion in FY 2010, \$1.66 billion in FY 2011, and \$1.75 billion in FY 2012 to FY 2013. Despite this authorization, EQIP and WHIP received only \$7.75 billion in funding from FY 2008 through FY 2013. Funds received annually over this period were \$1.09 billion in FY 2008, \$1.15 billion in FY 2009, \$1.27 billion in FY 2010, \$1.32 billion in FY 2011, \$1.45 billion in FY 2012, and \$1.47 billion in FY 2013. Since the enactment of the 2014 Act EQIP received \$1.35 billion, the full amount authorized in FY 2014, but only \$1.347 billion in FY 2015 rather the

\$1.60 billion authorized by the 2014 Act.

The 1985 Act, as amended by the 2014 Act, makes several changes to EQIP. The changes include consolidating elements of the former WHIP into EQIP, expanding participation among military veteran farmers or ranchers, requiring that funds provided in advance that are not expended during the 90-day period beginning on the date of receipt of funds be returned, establishing an overall payment limitation over FY 2014 through FY 2018 of \$450,000, providing that EQIP funding authorized by the 2014 Act remains available until expended, and requiring that at least 5 percent of available EQIP funds to be targeted for wildlife conservation practices for each fiscal year from 2014 to 2018. This 5 percent for wildlife habitat practices is based upon the total EQIP funding allocated as financial assistance available nationally for producer contracts. Based upon historical expenditures of wildlife-related practices in both WHIP and EQIP, and with emphasis to prioritize funding applications that address wildlife resource concerns, the agency anticipates that the actual funding associated with developing wildlife practices through EQIP will exceed the 5 percent national target. In FY 2014, about 6.5 percent of EQIP funds (\$60.8 million) were devoted to wildlife conservation practices. Seven percent of EQIP funds are available for eligible RCPP contracts. Additional explanation regarding funding pools and EQIP program priorities is provided in the Background section of the preamble.

EQIP technical assistance and financial assistance facilitates the adoption of conservation practices that address natural resource concerns. Those practices improve on-site resource conditions and produce offsite environmental benefits for the public. Water erosion conservation practices reduce the flow of pollutants off of fields, thus improving freshwater and marine water quality, including protecting fish habitat, enhancing aquatic recreation opportunities, and reducing sedimentation of reservoirs, streams, and drainage channels. More efficient irrigation practices conserve scarce water, making it available for

other uses. Wind erosion control practices improve air quality and some practices increase carbon in the soil profile. Wildlife habitat conservation practices increase wildlife habitat, enhance scenic value, and provide opportunities for recreation. A definition of "habitat development" was added and adopted to encompass the conservation practices that support the wildlife habitat activities authorized by section 1240B(g) of the 2014 Act. The term, as originally defined in the WHIP regulation, is added to EQIP at section 1466.3, "Definitions." The definition, consistent with EQIP authority to assist with implementation of conservation practices that include the specific technical purpose of habitat development, provides for the conservation of wildlife species.

Other impacts of conservation practices may accrue to the producer. Examples of these impacts include the maintenance of the long-term productivity of the land, improved irrigation efficiency, improved grazing productivity, more efficient crop use of animal waste and fertilizer, and increased profits from energy conservation.

Most of this rule's impacts consist of transfer payments from the Federal government to producers. While those transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Given the existing limitation and lack of data, NRCS will investigate ways to quantify the incremental benefits obtained from this program. Despite the limitations on our ability to quantify and estimate the value of social costs or benefits from the implementation of conservation practices, EQIP, as amended under the 2014 Act, is expected to positively affect natural resources and mitigate environmental degradation. Results from the national Conservation Effects Assessment Project conducted by NRCS demonstrate that implementation of the types of conservation practices funded under EQIP reduce sediment and nutrient loss from agricultural fields and improve water quality nationwide.

The 2014 Act increases EQIP funding over the amount provided by Congress for both EQIP and WHIP from FY 2008

through FY 2013 by 24 percent on an annualized basis to \$1.6 billion per year. From FY 2008 through FY 2013, the authorized level for EQIP and WHIP was a total of \$9.585 billion, but annual restrictions on EQIP and WHIP obligations enacted in the annual appropriations bills resulted in the actual authority being \$7.748 billion, for an annualized amount of \$1.291 billion. In contrast, the authorized level for EQIP under the 2014 Act for FY 2014 through FY 2018 is \$8 billion, for an annualized amount of \$1.6 billion (this assumes future funding caps are set at the authorized amounts). Actual authority for EQIP funding in FY 2014 of \$1.350 billion matched the amount authorized in the 2014 Act while restrictions limited actual EQIP funding in FY 2015 to \$1.347 million. These changes reduce the authorized level of spending for EQIP for FY 2014 through FY 2018 to \$7.747 million.

Additionally, the 2014 Act changed the period of availability for EQIP funding from 1-year to no-year funding, which means the funds remain available until expended. Thus, any unobligated balance at the end of a fiscal year could be available for obligation in the subsequent year. It is estimated that the conservation practices implemented with this funding will continue to contribute to reductions of water and wind erosion on cropland, pasture, and rangeland; reduce nutrient losses to streams, rivers, lakes, and estuaries; increase wildlife habitat; and provide other private and public environmental benefits. It is also expected that continued implementation of practices which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality from, for example, reduction in emissions such as methane. NRCS estimates that the cost,<sup>1</sup> from both public and private sources, of implementing the conservation practices with EQIP funding will be \$11,519 million dollars (FY 2014 through FY 2018). Cost estimates are presented in Table 1 below.

<sup>1</sup> Public costs include total TA and FA funds outlined in the Congressional Budget Office's (CBO) scoring of the 2014 Act. Private costs are out-of-pocket costs paid voluntarily by participants.

TABLE 1—PROJECTED TECHNICAL ASSISTANCE AND TRANSFER PAYMENTS, AS AUTHORIZED, FY 2014–FY 2018<sup>a</sup>

	NRCS technical assistance	Transfer payment	Public costs	Private costs	Total costs
	million \$	million \$	million \$	million \$	million \$
FY 2014 <sup>b</sup> .....	\$368.0	\$982.0	\$1,350.0	\$654.6	\$2,004.6
FY 2015 <sup>b</sup> .....	360.0	987.0	1,347.0	657.9	2,004.9
FY 2016 .....	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2017 .....	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2018 .....	472.5	1,277.5	1,750.0	852.2	2,602.2
Total .....	2,090.5	5,655.5	7,747.0	3,779.2	11,518.9

<sup>a</sup>Based on a historical average participant cost of 40 percent and a historical average technical assistance share of 27 percent.

<sup>b</sup>FY 2014 and FY 2015 represent actual funds received.

**Conclusions**

Program features of EQIP, except for the increase in wildlife focus, remains essentially unchanged from the 2008 Act. The increased funding over the period of FY 2014 through FY 2018 will increase the amount of conservation applied by agricultural producers, support continued improvement in the natural resource base (i.e. soil, water, air, and wildlife), and mitigate agriculture’s potentially adverse effects on the environment. The statutory requirement that at least 5 percent of available EQIP funding be targeted to practices that address wildlife habitat will be met by focusing a portion of the funding on applications that address wildlife resource concerns.

Overall, the conservation effects resulting from transferring \$5.7 billion to producers and providing \$2.1 billion in technical assistance from FY 2014 through FY 2018 will be reflected in nine primary resource categories and lead to improvements in cropland and grazing land productivity, water quality, air quality, water use efficiency, energy use efficiency, carbon sequestration and wildlife habitat.

**List of Subjects in 7 CFR Part 1466**

Agricultural operations, Animal feeding operations, Conservation payments, Conservation practices, Contract, Forestry management, Natural resources, Payment rates, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife.

Accordingly, the interim rule amending 7 CFR part 1466, which was published at 79 FR 73953 on December 12, 2014, is adopted as a final rule with the following changes:

**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–3839–8.

■ 2. Amend § 1466.2 by revising paragraph (c) to read as follows:

**§ 1466.2 Administration.**

\* \* \* \* \*

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. Since EQIP is a covered program under the Regional Conservation Partnership Program (RCPP), the Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under RCPP if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP. Consistent with section 1271C(c)(3) of the Food Security Act of 1985, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

\* \* \* \* \*

■ 3. Amend § 1466.7 by revising paragraph (e) to read as follows:

**§ 1466.7 EQIP plan of operations.**

\* \* \* \* \*

(e) If an EQIP plan of operations addresses forest land related resource concerns, the participant must implement conservation practices consistent with an approved forest management plan.

\* \* \* \* \*

■ 4. Amend § 1466.20 by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(5) to read as follows:

**§ 1466.20 Application for contracts and selecting applications.**

\* \* \* \* \*

(b) In selecting EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group, may establish ranking pools to address a specific resource concern, geographic area, or agricultural operation type or develop an evaluation process to prioritize and rank applications for funding that address national, State, and local priority resource concerns, taking into account the following guidelines:

(1) NRCS will select applications for funding based on applicant eligibility, fund availability, and the NRCS evaluation process. NRCS will rank applications according to the following factors related to conservation benefits to address identified resource concerns through implementation of conservation practices:

\* \* \* \* \*

(5) The evaluation process will determine the order in which applications will be selected for funding. To improve administrative efficiency, NRCS may use screening factors as part of its evaluation process that may include sorting applications into high, medium, or low priority. If screening factors are used to designate a higher priority for ranking, all eligible applications with a higher priority and that address an eligible resource concern are ranked and considered for funding before ranking or considering for funding applications that are a lower priority. The approving authority for EQIP contracts will be NRCS.

\* \* \* \* \*

■ 5. Amend § 1466.21 by revising paragraph (b)(3)(v) to read as follows:

**§ 1466.21 Contract requirements.**

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(v) Implement conservation practices consistent with an approved forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

\* \* \* \* \*

■ 6. Amend § 1466.25 by revising paragraphs (b) through (d), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

**§ 1466.25 Contract modifications and transfers of land.**

\* \* \* \* \*

(b) Within the time specified in the contract, the participant must provide NRCS with written notice regarding any voluntary or involuntary loss of control of any acreage under the EQIP contract, which includes changes in a participant's ownership structure or corporate form. Failure to provide timely notice will result in termination of the entire contract.

(c) Unless NRCS approves a transfer of contract rights under this paragraph (c), a participant losing control of any acreage will constitute a violation of the EQIP contract and NRCS will terminate the contract and require a participant to refund all or a portion of any financial assistance provided. NRCS may approve a transfer of the contract if:

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (d) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the EQIP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the original participant's losing control of all or a portion of the land under contract.

(d) Until NRCS approves the transfer of contract rights, the new producer is not a participant in the program and may not receive payment for conservation activities commenced prior to approval of the contract transfer.

(e) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control is voluntary, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

\* \* \* \* \*

Signed this 26th day of April, 2016, in Washington, DC.

**Jason A. Weller,**

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

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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 730, 740, 742, 744, 746, 754, 762, 772, and 774**

**[Docket No. 160302175- 6175- 01]**

**RIN 0694-AG83**

**Removal of Short Supply License Requirements on Exports of Crude Oil**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to remove the short supply license requirements that, prior to the entry into force of the "Consolidated Appropriations Act, 2016" on December 18, 2015, applied to exports of crude oil from the United States. Specifically, this rule removes the Commerce Control List (CCL) entry and the corresponding short supply provisions in the EAR that required a license from BIS to export crude oil from the United States. This rule also amends certain other EAR provisions to reflect the removal of these short supply license requirements. The changes made by this rule are intended to bring the provisions of the EAR into full compliance with the act, which mandates that, apart from certain exemptions specified therein, "no official of the Federal Government shall impose or enforce any restriction on the export of crude oil." Consistent with the exceptions in the act, exports of crude oil continue to require authorization from BIS to embargoed or sanctioned countries or persons and to persons subject to a denial of export privileges. **DATES:** This rule is effective May 12, 2016.

**ADDRESSES:** Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Sehra, Office of Management and Budget (OMB), by email to [Jasmeet\\_K\\_Sehra@omb.eop.gov](mailto:Jasmeet_K_Sehra@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce,

14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Telephone: (202) 482-0092, Email: [eileen.albanese@bis.doc.gov](mailto:eileen.albanese@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to comply with the requirements of Division O, Title 1, Section 101 of Public Law 114-113 (the Consolidated Appropriations Act, 2016) concerning exports of crude oil from the United States. These provisions repeal Section 103 of the Energy Policy and Conservation Act (formerly, 42 U.S.C. 6212), which required that the President promulgate a rule prohibiting the export of crude oil, and mandate, instead, that "notwithstanding any other provision of law, except as provided in subsections (c) and (d) . . . no official of the Federal Government shall impose or enforce any restriction on the export of crude oil." Consistent with this requirement, this final rule amends part 754 of the EAR by removing and reserving § 754.2, which described the short supply license requirements and licensing policies that applied to exports of crude oil from the United States to all destinations. This rule also amends the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR by removing Export Control Classification Number (ECCN) 1C981, which controlled crude petroleum, including reconstituted crude petroleum, tar sands and crude shale oil listed in Supplement No. 1 to part 754 of the EAR (Crude Petroleum and Petroleum Products). In addition, this rule moves the definition of "crude oil," which previously appeared in § 754.2(a) of the EAR, to § 772.1 (Definitions of terms as used in the Export Administration Regulations (EAR)), because it continues to have relevance with respect to the end-user/end-use requirements in part 744 of the EAR and the embargoes and other special controls in part 746 of the EAR. The scope of this definition remains unchanged.

The effect of the changes described above is to remove the short supply license requirements previously applicable to crude oil, as controlled under ECCN 1C981, thereby making crude oil an EAR99 item (*i.e.*, subject to the EAR, as described in § 734.3(a), but no longer listed on the CCL). As such, crude oil exports will now be treated