CIVIL RIGHTS IMPACT ANALYSIS
FOR THE INTERIM FINAL RULE:
ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Agency: **US Department of Agriculture (USDA)**
Natural Resources Conservation Service (NRCS)

Subject: **Civil Rights Impact Analysis**
Environmental Quality Incentives Program Interim Final Rule
Agricultural Act of 2014 (2014 Act)

A review of the interim final rule, Environmental Quality Incentives Program (EQIP) has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the EQIP interim final rule would have a disproportionate adverse civil rights impact for NRCS producers who are minorities, women, or persons with disabilities. The review indicates the rule provides changes enacted by the 2014 Act and other improvements which may in fact improve availability or opportunities for program participation for historically underserved producers.

BACKGROUND

EQIP is a voluntary nationwide program implemented under the general supervision and direction of the Chief of NRCS, under the borrowing authority of the Commodity Credit Corporation (CCC). EQIP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. The purpose of the program is to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits. Through EQIP, NRCS provides financial and technical assistance to eligible farmers and ranchers to address soil, water, air quality, wildlife habitat, surface and groundwater conservation, and related natural resource concerns. EQIP's financial and technical assistance help producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. The purposes of the program are achieved by implementing conservation practices.

The EQIP was authorized under section 334 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), 16 U.S.C. 3836a, which added chapter 4 of subtitle D of Title XII of the Food Security Act of 1985 (the 1985 Act), 16 U.S.C. 3839aa et seq. The 2012 Act further amends chapter 4 of subtitle D of title XII of the 1985 Act. NRCS first allocated funds for EQIP in 1996. Over the life of the program, EQIP has entered into 469,674 contracts with farmers and ranchers to apply conservation practices on approximately 198 million acres.

EQIP was reauthorized by the Agricultural Act of 2014 (2014 Act) to promote agricultural production and environmental quality as compatible national goals. EQIP continues USDA's commitment to streamlining and improving its conservation programs and providing flexible technical and financial assistance to producers to install and maintain conservation systems that enhance soil, water, related natural resources (including grazing land and wetland), and wildlife habitat while sustaining production of food and fiber.

The regulation is organized into three subparts: Subpart A — General Provisions; Subpart B — Contracts; Subpart C — General Administration. The basic structure of the regulation has not changed.

LEGISLATIVE CHANGES

In summary, the changes made by the 2014 Act include, but are not limited to:

- Eliminates requirement that contract must remain in place for a minimum of 1 year after last practice implemented, but keeps requirement that the contract term is not to exceed 10 years.
- Consolidates elements of Wildlife Habitat Incentives Program (WHIP) into EQIP, and repeals WHIP authority.
- Replaces rolling 6-year payment limitation with payment limitation for FY 2014-FY 2018
- Requires Conservation Innovation Grants (CIG) reporting no later than Dec 31, 2013 and every 2 years thereafter.
- Payment limitation established at $450,000 and waiver authority is eliminated.
- Modifies the special rule for foregone income payments for certain associated management practices and resource concern priorities.
- Advance payments are available up to 50 percent for eligible historically underserved participants to purchase material or contract services instead of the previous 30 percent.
- Provides flexibility for repayment of advance payment if not expended within 90 days.
- For each of the FY 2014 to FY 2018, at least five percent of available EQIP funds shall be targeted for wildlife related conservation practices.
- Funding for EQIP is authorized at:
    - $1,350,000,000 for FY 2014
    - $1,600,000,000 for FY 2015
    - $1,650,000,000 for FY 2016
    - $1,650,000,000 for FY 2017
    - $1,750,000,000 for FY 2018.
- The 2014 Act provides that EQIP funding remains available until expended.

The objective of the current rule is to incorporate the changes made by the 2014 Act and NRCS is taking this opportunity to clarify a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the EQIP rule by clarifying streamlining the regulation to focus upon only those provisions that relate to conservation program participants rights and responsibilities under the programs.

The fundamental purpose of the program, assisting agricultural producers to implement conservation practices to provide environmental benefits, has not changed. Revisions to the program have focused primarily on expanding participation among historically underserved populations, including special priority for beginning agricultural producers and socially disadvantaged producers with preference provided under these special priorities for individuals who are veteran farmers and ranchers. The interim rule also includes changes to streamline program implementation and make the participant's contract responsibilities clearer and more transparent. NRCS is also removing definitions for terms that are not used in the regulation and other editorial adjustments.

CIVIL RIGHTS IMPACT ANALYSIS

The Civil Rights Impact Analysis (CRIA) is directed towards the identification of actual or potential civil rights issues. The purpose is to identify, if any, adverse implications the EQIP final interim rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate impact occurs when a recipient uses a policy or practices that while neutral on its face and applicable to everyone, disproportionately and adversely affects members of a protected group and the recipient can articulate no substantial legitimate justification. The theory of disparate impact does not require proof of discriminatory intent, but centers around the adverse effect(s) that a policy or practices has on protected groups.

The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review examined: (A) general provision; (B) administration and development; (C) historical participation data; (D) eligibility criteria; (E) outreach strategy; (F) barrier removal provisions; (G) conclusion; and (H) NRCS Civil Rights Director's certification. The examination sought to determine if all the affected groups:

- are provided the same opportunities to participate in the decision-making or rulemaking process for EQIP,
- have historically been provided the same opportunities to participate in NRCS programs, and
- are provided the same information to decide if they wish to participate in the EQIP.

A. General Provisions

EQIP continues USDA's commitment to streamlining and improving its conservation programs and providing flexible technical and financial assistance to producers to install and maintain conservation systems that enhance soil, water, related natural resources (including grazing land and wetland), and wildlife habitat while sustaining production of food and fiber. EQIP activities will be carried out according to an EQIP plan of operations. This plan of operations addresses the conservation objectives to be achieved through one (1) or more conservation practices. A voluntary program, EQIP offers financial and technical help to perform or implement conservation practices called for in contracts up to 10 years on eligible agricultural land. These practices are subject to NRCS technical requirements adapted for local conditions.

Below is a summary of the changes being made to **Subpart A - General Provisions**:

Section 1466.1, "Applicability," sets forth the purpose, scope, and objectives of EQIP. The 2014 Act amendments did not affect the regulatory provisions at §1466.1.

Section 1466.2, "Administration," describes the roles of NRCS, State Technical Committees, and local working groups. The 2014 Act amendments did not affect the regulatory provisions at §1466.2. NRCS continues to administer EQIP at the State, tribal, and local levels. Determinations related to eligible practices and payment rates are made at the State level, in consultation with the State Technical Committee and Tribal Conservation Advisory Council. The designated conservationist uses the local working group to gather input related to priority resource concerns.

The 2014 Act also identifies EQIP as a covered program under the Regional Conservation Partnership Program authorized by subtitle I of title XII of the Food Security Act of 1985. RCPP operates through the contributing program regulations and NRCS is adding language to this section to identify that the Chief is authorized to waive non-statutory discretionary regulatory provisions and operational procedures where the Chief determines that the waiver will further the purposes of EQIP. This language is needed to facilitate RCPP implementation using EQIP in RCPP partner project areas.

Section 1466.3, "Definitions," sets forth definitions for terms used throughout this regulation. NRCS is amending several definitions to address to conform to the 2014 Act amendments, including the consolidation of the Wildlife Habitat Incentives Program (WHIP), and to address other administrative matters as described more fully below. Specifically, §1466.3 is amended as follows:

NRCS amends the definition of "agricultural operation" to remove an incorrect citation. In the interim rule published January 15, 2009, NRCS amended the definition of "applicant" to include the 2008 Act's terminology but kept the reference to an "agricultural or forestry operation as defined in part 1400 of this chapter." However, 7 CFR part 1400 does not have a definition for an

agricultural operation, and therefore NRCS is revising the definition to refer to an agricultural operation "as determined by NRCS."

NRCS amends the definition of "at-risk species" to incorporate the definition that was adopted by NRCS for WHIP implementation. Through WHIP, NRCS provided technical and financial assistance to participants to develop upland, wetland, and aquatic wildlife habitat, as well as fish and wildlife habitat on other areas and to develop habitat for at-risk species, including threatened and endangered species. Section 2203 of the 2014 Act consolidated WHIP purposes into EQIP by revising section 1240B of the EQIP statute to authorize at least 5 percent of program funds for practices targeted to wildlife habitat, including conservation practices that support the restoration, development, and improvement of wildlife habitat on eligible land. The WHIP interim final rule published January 2009 requested input regarding the definition of "at-risk species" and in response to public comment, NRCS revised the WHIP regulatory definition for "at-risk species" in its November 23, 2010 WHIP final rule. NRCS incorporates this revised definition into §1466.3.

NRCS adds and defines the new term, "veteran farmer and rancher," consistent with the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)). Other adjustments are made to this definition pursuant to public comment received to the January 2009 interim final.

NRCS amends the term "National Organic Program," to include the reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.). The 2014 Act combined the statutory definition of the "National Organic Program" into the statutory definition of "organic system plan" by adding the statutory reference to the definition of "organic system plan" and removing the separate definition. NRCS maintains the separate definition for the National Organic Program in the regulation for clarification purposes.

NRCS amends the term, "organic system plan," to incorporate the statutory reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.). The organic system plan is defined as a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The organic system plan includes written plans concerning all aspects of agricultural production or handling.

NRCS also adds a definition for "wildlife habitat" to more fully incorporate WHIP purposes into EQIP implementation. This new definition corresponds with the definition of "wildlife habitat" used at 7 CFR part 636, the WHIP regulation.

Section 1466.8, "Program Requirements," sets forth land and applicant eligibility and the amount of EQIP funding to be used for livestock production and historically underserved producer. NRCS updates §1466.8 consistent with the updates made to the definitions at §1466.3. Other adjustments made in response to public comment are described below.

Paragraphs (d) and (e) have been removed as the funding threshold that at least 60% of EQIP assistance be targeted to conservation practices related to livestock production and the 5% funding pool for beginning farmers and ranchers and socially-disadvantaged farmers and ranchers are established by statute and are binding requirements upon the NRCS. Thus regulatory provisions are not necessary in order to give these provisions effect. Similarly, the 2014 Act requires that at least five percent of EQIP assistance be targeted towards conservation practices with a specific purpose related to wildlife habitat. NRCS will track this new funding requirement by identifying in its contract data base those conservation practices where wildlife habitat is the

primary purposes. Out of more than 160 conservation practice standards, 16 have wildlife habitat as a primary purpose, and approximately another 45 standards are often used to benefit wildlife. Examples of standards with a primary wildlife focus include:

- **Early Successional Habitat Development/Management** – used for early successional species such as the Golden Winged Warbler or New England Cottontail. This practice standard includes planting and vegetation management.
- **Wetland Restoration** – used to develop habitat for the variety of wetland-dependent species, from amphibians to migratory water birds. This practice standard includes structural, grading, planting, and water management.
- **Stream Habitat Improvement and Management** – used for many aquatic species, including salmon. This practice includes in-stream work such as building redds, pools and riffles, establishing woody debris, and vegetation management.
- **Upland Wildlife Habitat Management** – used often in a system of practices or a wide variety of terrestrial species. Often, NRCS adds this conservation practice to a conservation plan to ensure other practices (e.g., fence) are wildlife-friendly. Includes the use of wildlife habitat assessment tools to determine practices needed.

Section 1466.9, "EQIP plan of operations," describes the requirements of the EQIP plan of operations, which is a component of the EQIP contract. Section 2204 of the 2014 Act replaced the term "environmental benefits" with "conservation benefits." Therefore, NRCS amends §1466.9 to replace the term "environmental objectives" with the term "conservation objectives" every place it occurs in the section.

Section 1466.10, "Conservation practices," describes how NRCS determines eligible conservation practices. NRCS makes a minor editorial change in paragraph (a) to clarify that the term "practice" used in the second sentence means "conservation practice" as defined in §1466.3.

Additionally, NRCS amends paragraph (d) to reference "conservation objectives" instead of "environmental objectives" consistent with the statutory change made by section 2204 of the 2014 Act. Finally, NRCS adds a new paragraph (a) to ensure that State Conservationists target EQIP funds to wildlife habitat consistent with the additional wildlife habitat purposes incorporated into EQIP by section 2203 of the 2014 Act.

The identified changes in this subpart of the EQIP rule are intended for clarification and consistency and should not impact as potential program participant's rights or responsibilities.

Below is a summary of the changes being made to **Subpart B – Contracts and Payments**:

Section 1466.20, "Application for contracts and selecting offers from producers," addresses how producer applications are submitted and selected for funding. NRCS updates the language throughout §1466.20 to reference "conservation" objectives instead of "environmental" benefits, consistent with the amendment made by section 2204 of the 2014 Act. NRCS also updates the terms used throughout §1466.20 to correspond to the updates to the terms in §1466.3 Definitions. To reduce administrative burden and improve timely delivery of program benefits, NRCS also removes the requirement in §1466.20(b)(4) that EQIP applications $150,000 or greater require the review and approval of Regional Conservationist.

Section 1466.21, "Contract requirements," identifies elements contained within an EQIP contract and the responsibilities of the participant who is party to the EQIP contract. This section also addresses EQIP contract funding limitations. To receive payment, an applicant must enter into an EQIP contract. The EQIP contract identifies all financially supported conservation practices to be implemented, their timing and sequence, and the operation and maintenance needed to maintain the conservation practice for its intended lifespan.

NRCS amends paragraph (b)(2) to change the duration of the term of an EQIP contract to correspond with the change to the length of the contract term made by section 2203 of the 2014 Act. In particular, an EQIP contract shall have a term for no more than 10 years.

NRCS amends paragraph (b)(3)(i) by replacing "within the agricultural or forestry operation" with "on the enrolled land," consistent with the change made by section 2205 that replaced "farm, ranch, or forest" with "enrolled" at Section 1240D of the EQIP statute. NRCS continues to use a contract funding limitation to manage the program. Consistent with statutory payment limitation requirements, NRCS retains the practice of limiting the contract amount to the person/legal entity payment limitation.

Section 1466.22, "Conservation practice operation and maintenance," addresses the participant's responsibility for conservation practice operation and maintenance. NRCS replaces the term "environmental benefits" with "conservation benefits" at paragraph (c), consistent with section 2204 of the 2014 Act.

Section 1466.23, "Payment rates and levels," addresses payment rates and payment eligibility. NRCS replaces the reference to "environmental benefits" with "conservation benefits" at paragraph (a)(4), consistent with section 2204 of the 2014 Act. Section 2203 of the 2014 Act modified the factors that NRCS should consider when determining the amount and rate of payment for income foregone available to support certain management practices or address specific natural resource concerns.

Therefore, NRCS revises paragraph (c)(1)(iv) to incorporate the changes made by section 2203 so that paragraph (c)(a)(iv) now reads: "(iv) In determining the amount and rate of estimated income foregone, NRCS may assign higher significance to conservation practices which promote: (A) Soil Health; (B) Water quality and quantity improvement; (C) Nutrient management; (D) Pest management; (E) Air quality improvement; (F) Wildlife habitat development, including pollinator habitat; (G) Invasive species management; (H) Other resource issues of regional or national significance, as determined by NRCS."

For participants who are identified as historically underserved producers, in accordance with §1466.3, NRCS may award the applicable payment rate and an additional payment rate that is not less than 25 percent above the applicable payment rate, provided this increase does not exceed 90 percent of the estimated incurred costs and 100 percent of income foregone associated with the conservation practice. NRCS amends § 1466.23 paragraph (b)(2) to clarify that veteran farmers and ranchers may also be awarded the special payment rate for historically underserved producers, consistent with the addition of veteran farmers and ranchers by section 2203 of the 2014 Act.

NRCS revises § 1466.23 **paragraph** (b)(3) to clarify that NRCS will only reduce the applicable payment rate to which a producer is entitled if the producer receives financial contributions for the implementation of a conservation practice from other USDA sources. The 2008 Act had revised section 1240B(d)(5) of the 1985 Act to specify that any non-Federal assistance that a producer receives should not impact the level of financial assistance a producer receives for EQIP participation. The January 2009 interim final rule had not updated paragraph (a)(3), and therefore NRCS is making the adjustment in this interim rule.

Section 1466.24, "EQIP payments," provides direction on payment eligibility and payment limitations. Section 2206 of the 2014 Act amended section 1240G of the 1985 Act to replace the current $300,000 payment limitation with a $450,000 payment limitation and to apply the new payment limitation for a specific time period of FY 2014 through FY 2018, replacing the rolling

six-year period. NRCS therefore amends paragraph (a) to incorporate this specific payment limitation for EQIP payments received during FY 2014 through FY 2018. The 2014 Act did not change the payment limitations associated with EQIP support of organic operations or those transitioning to organic per Section 1240(B) of the Act. Therefore the agency will enforce both payment limitations applicable to all program participants as cited in § 1466.24.

Paragraph (d) is updated to use simplified regulatory references, such as replacing "Part 1400 of this chapter" with "7 CFR part 1400." Paragraph (d) is also amended at (d)(11) to incorporate the flexibility provided by the section 2203 of the 2014 Act to how advance payments may be made to historically underserved producers. In particular, advance funds paid to program participants must be expended within 90 days from receipt of funds, or returned to NRCS within a reasonable time as determined by the State Conservationist and eligibility for advance payment is contingent upon the participant obtaining an NRCS approved practice design.

Section 1466.27, "Conservation Innovation Grants," sets forth the policies and procedures related to awarding grants under the Conservation Innovation Grants provision at section 1240H of the 1985 Act. Section 2207 of the 2014 Act added a reporting requirement for NRCS. In particular, NRCS must report not later than December 31, 2013, and every 2 years thereafter, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of projects funded under this section, including funding awarded; project results; and incorporation of project findings, such as new technology and innovative approaches, into NRCS conservation efforts. A new paragraph (l) has been added to §1466.27 to address this reporting requirement.

Based on the revision's to Subpart B, NRCS may provide **payments up to 75 percent** of the estimated incurred costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training. Under the 2014 Act, NRCS may also provide payments to a producer up to **100 percent** of income foregone to implement particular conservation practices. Where a producer incurs both costs in implementing a conservation practice and foregoes income related to that practice implementation, a producer may receive both a payment up to 75 percent of the estimated costs incurred and up to 100 percent of the estimated income foregone.

For historically underserved producers, NRCS will award the applicable payment rate and an additional rate that is not less 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the estimated incurred costs associated with the conservation practice. NRCS will also provide advance payments to historically underserved producers for the purpose of purchasing materials or services. The advance payment shall not exceed 50 percent of the total costs. Payment may also be made to producers for conservation practices related to organic production and for conservation practices related to the transition to organic production.

NRCS will also establish a national target to set aside of 5 percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers. The 2012 Act identifies that veteran farmers or ranchers who are also either socially disadvantaged farmers and ranchers or beginning farmers and ranchers will be given priority for these funds. An Agency National Bulletin has already been disseminated regarding the elevation of veterans as a priority group in USDA and NRCS funding.

Due to phasing out of the WHIP, all practices available in WHIP will be available in EQIP. Minority participation rates in EQIP have consistently been larger than participation rates in the WHIP, despite the slightly broader participant eligibility criteria (WHIP eligibility included both agricultural producers and non-ag rural land owners, whereas EQIP requires the applicant to be an agricultural producer.) Conversely, land eligibility for EQIP includes public owned lands which were not allowed through

WHIP. With the melding of these two programs, it is anticipated that EQIP will result in greater overall program participation by historically underserved producers.

Subpart C of the EQIP regulation addresses a participant's responsibility to comply with regulatory measures, provide NRCS access to lands enrolled in the program for compliance monitoring during the term of the contract, and other general program matters. The 2014 Act changes do not impact the regulatory provisions at Subpart C.

B. Administration and Development

In addition to incorporating the changes made by the 2014 Act, NRCS is taking this opportunity to clarify a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the EQIP rule by clarifying streamlining the regulation to focus upon only those provisions that relate to conservation program participants rights and responsibilities under the programs.

Those clarifications include the following:

Access to Operating Unit
NRCS wishes to make clear and explicit to NRCS representatives and the public the rights and limitations NRCS has entering an agricultural operation. Therefore, NRCS has amended § 1466.32 to read as follows: ".... Making an effort prior to accessing a participant's agricultural operation or tract should consist of contacting the participant ahead of time or stopping at the farm headquarters in order to make the participant aware of NRCS or TSP access for program assistance prior to accessing the property. The NRCS or TSP representative will only access areas of the property necessary to complete program related activities."

Animal Feeding Operations (AFOs)
Section 1240E(a)(3) of the Food Security Act of 1985 authorizes payments for AFOs provided that the producer submits a plan of operations that provides for development and implementation of a comprehensive nutrient management plan (CNMP), if applicable. The 2002 Act removed the restriction for EQIP to provide assistance to large confined livestock feeding operations. The 2008 Act and the 2014 Act did not modify the previous Act.

In particular, the Manager's Report to the 2002 Act specified, "All livestock producers that receive funding for animal waste manure systems must have a CNMP. The Managers believe that there will be few cases in which a CNMP will not be required. The Managers recognize the importance of CNMPs for the proper use and storage of animal waste and for that reason require these plans." To address the requirements for development and implementation of a CNMP consistent with the intent of the Food Security Act of 1985 and Manager's Report, NRCS has amended §1466.3 Definitions and §1466.9(d) EQIP plan of operations as follows:

- Section §1466.3 Definitions is amended to add a definition for Animal Feeding Operation (AFO) that is consistent with regulatory requirements established by the Environmental Protection Agency (EPA); and
- Section §1466.3 Definitions is revised to reflect CNMP means a conservation plan that is specifically for an animal feeding operation (AFO); and
- Section §1466.9(d) is revised to clarify when development of a CNMP is required, as follows: "If an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an Animal Feeding Operation (AFO), the participant must agree to develop and implement a CNMP or demonstrate to the satisfaction of the designated conservationist that a CNMP will be implemented by the end of the contract period."
- Section 1466.21(b)(3))iv) is revised to clarify when development of a CNMP is required, as follows: "Implement a comprehensive nutrient management plan (CNMP) when the EQIP contract includes an animal waste management facility on an Animal Feeding Operation (AFO);"

Conservation Innovation Grants

The CIG component of EQIP stimulates the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. The regulations for CIG are found at 7 CFR § 1466.27. The January 15, 2009, interim final rule revised §1466.27(c)(4) to read: "(4) There are some costs that grantees may not cover using CIG funds, such as costs incurred prior to the effective date of the grant, entertainment costs, any indirect cost exceeding 15 percent, or renovation or refurbishment of facilities. A detailed list of costs not allowed will be published in the request for proposals."

Based upon implementation and to provide flexibility to the Chief, NRCS is amending § 1466.27(c)(4) to the pre-interim final rule provision by removing the language "any indirect cost exceeding 15 percent." The request for proposals for each fiscal year will advertise the indirect cost percentage in accordance with applicable law. NRCS is removing the provisions at 7 CFR §§1466.27(c)(1) and 1466.27(f) that require CIG funding opportunities to be published in the Federal Register. Since this provision was first incorporated, the Federal Government adopted the Grants.gov portal through which funding opportunities are announced. Therefore, such announcements are no longer required to be published in the Federal Register. See §§ 1466.27(c)(1) and 1466.27(f). NRCS has also made several adjustments to explain the cost-share responsibilities of a grantee.

Consultation with Conservation Districts

Section 1466.26 authorizes NRCS to consult with conservation districts in contract termination decisions. However, NRCS is unable to consult with conservation districts on specific cases due to the confidentiality of producer information under section 1619 of the 2008 Act. Therefore, this section has been removed though NRCS will continue to work closely with its conservation district partners in the implementation of EQIP and its other conservation programs.

Definition of Terms

Agricultural Land

NRCS has revised the definition of agricultural land to read as follows: "Agricultural land means cropland, grassland, rangeland, pastureland, forest land, and other land on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, wetlands, waterways, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock." NRCS elects not to include reference to land "suitable for livestock production," since this implies acceptance of land which is not currently in agricultural use.

To make §1466.8(c) in this interim rule more consistent with the amended definition of agricultural land, NRCS has amended §1466.8(c) to read as follows: "...Other agricultural lands include cropped woodland, wetlands, waterways, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock..."

Agricultural Operation

The definition of "agricultural operation" included the phrase "and that is operated by the producer with equipment, labor, management, and production...practices that are substantially separate from other operations." NRCS removes this phrase as it relates to the eligibility and identification of an agricultural operation under Conservation Stewardship Program (CSP) (7 CFR part 1470), a critical component of CSP implementation to ensure that the CSP contract encompasses the entire discrete agricultural operation of the producer. However, since a producer does not need to enroll their entire discrete agricultural operation under an EQIP contract, this additional language is not necessary and NRCS wishes to simplify the terms necessary to implement EQIP. Therefore, this interim rule defines agricultural operation as follows: "Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which the producer has in the FSA record system

Conservation Practice
NRCS has amended the definition of conservation practice to clarify and make it more consistent with other NRCS conservation programs. The definition now reads: "Conservation practice means a specified treatment, such as a structural, vegetative, land management, or forest management practice, including CNMPs, CAPs, and other plans or activities determined eligible by the. Approved conservation practices are listed in the NRCS Field Office Technical Guide (FOTG)."

Estimated Income Foregone
For clarification, NRCS has amended the definition to read: "Estimated income foregone means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income ($/unit/year) lost from implementing a conservation practice which results from a change in land use or land taken out of production . Foregone income shall not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production"

Land-based conservation practice
Section 1240A(1) of the EQIP statute provides that the term "eligible land" means "land on which agricultural commodities, livestock, or forest-related products are produced. Section 1240A(2) provides further that "eligible land" includes "other agricultural land (including cropped woodland, marshes, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed through a contract under the program, as determined by the Secretary." The statutory definition of "practice" includes either improvements to "eligible land" or "conservation activities involving the development of plans appropriate for the eligible land of the producer." Since NRCS conservation practices are not all necessarily implemented on land, NRCS has added a new definition for the term "land-based conservation practice" to clarify that EQIP assistance is limited to those conservation practices that have sufficient nexus to eligible lands. Therefore, the new definition reads as follows: "Land-based conservation practice means a conservation practice that is implemented on eligible land to address a resource concern related to agricultural production."

Environmental Credits
NRCS recognizes the increased interest among agricultural producers to be able to participate in environmental service markets. Therefore, NRCS clarifies its environmental service markets policy in §1466.36 as follows: "NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through EQIP, and environmental credits may be gained as a result of implementing activities compatible with the purposes of an EQIP contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that EQIP purposes are met and that operation and maintenance requirements for EQIP-funded improvements are met, consistent with § 1466.21 and § 1466.22. Where activities required under an environmental credit agreement may affect land under an EQIP contract, participants are highly encouraged to request a compatibility determination on program purposes and operation and maintenance requirements from NRCS prior to entering into any credit agreements. The EQIP conservation program contract may be modified in accordance with policies outlined in § 1466.25 provided the modifications meet EQIP purposes and are in compliance with this part."

Irrigation History Requirement
NRCS has received numerous comments since publication of the EQIP interim final rule in January 2009 related to the topic of irrigation. These comments have focused upon the irrigation history requirement in EQIP that is used to determine whether proposed irrigation related practices will result in water conservation or water savings. A requirement of EQIP is to provide a positive conservation benefit to address a resource concern which for the purpose of an irrigation practice, is water savings. The

determination or calculation of water savings is generally determined based upon the difference in amount of water used before and after implementation of the irrigation practice providing an estimate of water saved or conserved. Without evidence of existing irrigation, it is difficult to justify funding to implement a practice without documentation that conservation benefit or water savings is achieved. Funding of practices to facilitate new irrigation practices that do not currently exist would tend to defeat the purpose of the program to provide a conservation benefit.

NRCS has received overall support for the current interim rule requiring evidence that land has been irrigated 2 of the past 5 years to ensure that both a natural resource concern will be addressed by EQIP assistance and that EQIP assistance does not result in adverse impacts to aquifer depletion or surface streams experiencing decreased flow. Despite general support for continued use of the irrigation history requirement, some individuals and groups have suggested the rule include provisions for exceptions or allowance for flexibility to the rule to address specific situations where adjustment of the requirement may be appropriate.

Some producers, especially limited resource and socially-disadvantaged producers, cannot benefit fully of EQIP program assistance because of difficulty meeting this irrigation history requirement for reasons beyond their control. There are situations where EQIP producers do not have control over historical use of irrigation on some lands, such as Tribal lands, and therefore cannot meet or document the irrigation history requirement. Additionally, producers who do not have extensive structural irrigation delivery systems, such as are commonly found on large agricultural operations, use non-mechanized irrigation methods and do not maintain records for these irrigation applications.

NRCS believes that a narrowly-tailored waiver provision will address these participation barriers in a manner that ensures EQIP continues to meet its statutory purposes through fully addressing natural resource concerns on eligible land. Therefore, §1466.8(c) is modified to identify that the Chief of NRCS may waive this irrigation history provision under specified conditions as determined by the Agency. Conditions that the Chief may consider when considering a waiver request include: the participant is a historically underserved producer as defined in this part, the inability to establish an irrigation history is for reasons beyond the control of the participant, irrigation will be applied for land that has been actively engaged in agricultural production in four of the last 6 years, the irrigation system will be used to address water quality, soil quality or erosion resources concerns, the waiver will not conflict with regulatory requirements concerning management of ground and surface water, and other potential environmental impacts of the waiver.

NRCS is requesting public input about the inclusion of a waiver provision for the irrigation history requirement, and what criteria the Chief should consider when considering a waiver request.

Outreach

To improve clarity of this interim final rule, NRCS has amended the language in §1466.7 to read as follows:

> "NRCS will establish program outreach activities at the national, State, tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian tribes, Alaska Natives, and Pacific Islanders. NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type of operation, or production system, including small-scale, specialty crop and organic production."

NRCS provides further guidance in agency policy that special emphasis will be made in all information activities to provide conservation assistance, program outreach, and access to limited resource farmers or

ranchers, socially disadvantaged farmers or ranchers, small-scale farmers or ranchers, beginning farmers or ranchers, tribal members, Alaska Natives, Pacific Islanders, producers with disabilities, veteran farmers or ranchers, and other producers with historically low participation rates in conservation programs. Procedures will adhere to national outreach policy guidance in GM Title 230 Part 406. Special emphasis outreach efforts could include, but not be limited to:

(a) Establishing special outreach activities at the national, State, tribal, and local levels; and

(b) Providing special accommodations, to the extent possible, to assure that producers are aware, informed, and have access to information and assistance, such as:

(1) Using language spoken by the intended audience;

(2) Using appropriate media sources to reach the intended audience; and

(3) Partnering with nongovernmental organizations to assist in reaching more potential customers.

Practice Costs, Payment Rates, and Payment Schedules

The process for documenting estimated incurred costs for conservation practices implemented through program support is an iterative process that begins with technical requirements of the practice standard, development of geographically based regional scenarios, identification of associated components and costs, a quality control process for review and publication of resulting payment schedules used to support final payment rates. The process for documentation of estimated costs in payment schedules provides the following benefits to ensure accurate and timely delivery of program benefits:

(i) Provide transparency and timely payment rate information to program applicants and agency partners.

(ii) Ensure that payment schedules are consistent with program authority.

(iii) Provide a consistent, reliable and defensible method for documenting eligible costs.

(iv) Provide flexibility which reflects cost variation across the nation.

(v) Uses established and accepted economic geographic areas aligned with States and regions based on farm employment data, crop costs, and other economic factors.

(vi) Ensure payment rates and financial assistance are consistent with the definition, purpose, and requirements of approved conservation practice technical standards.

(vii) Provide for simplification of program application, contract administration, and program payments.

(viii) Support agency efforts to reduce State and Field staff workload allowing more time for conservation planning, technical assistance, and practice implementation.

NRCS believes that payment rates are best established through a nationally guided payment schedule process with State Conservationist, in consultation with the State Technical Committee, Tribal Conservation Advisory Council, and local working groups, setting payment percentages which determine the final payment rate. The current regulation in § 1466.23 provides that "Practice payment rates greater than 50 percent for estimated costs incurred, excluding those described in (c)(2) of this section, are to be approved by the Chief or designee." However, NRCS believes that the current national payment schedule process provides adequate review and oversight for development of final payment rates and there is no longer need to elevate approval of payment rates greater than 50 percent to the Chief, and will remove§ 1466.23(c).

NRCS makes a revision to rule to clarify when payment rates may be reduced as a result of the agency entering into a formal agreement with partner who provides payments to producers participating in EQIP. Section 1466.23(d)(4) is revised as follows: "When the agency enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief must adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice."

NRCS makes a technical correction in its cross-reference to subparts in 7 CFR part 1400 to read: "(1) The provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility, subparts A and F.... (6) Eligibility for payments in accordance with 7 CFR part 1400, subpart F will be determined prior to approval." The existing language refers to subpart G which no longer exists.

State Technical Committee as identified in the EQIP Rule

In order to clarify the role of the State Technical Committee and further align the EQIP rule with the State Technical Committee rule (7 CFR part 610), NRCS has changed the language in the EQIP rule at § 1466.2(b) to read as follows:

"(b) NRCS supports locally-led conservation by soliciting input from the State Technical Committee and the Tribal Conservation Advisory Council at the State level, and local working groups at the county, parish, or tribal level to advise NRCS on issues relating to EQIP implementation. Recommendations from the State Technical Committee and the Tribal Conservation Advisory Council may include but are not limited to:

(1) Recommendation for program priorities and criteria;
(2) Identification of priority resource concerns;
(3) Recommendation of which conservation practices will be effective to treat identified priority resource concerns; and
(4) Recommendation of program payment percentages for payment schedules."

Technical Service Providers as Appearing in the EQIP Rule

NRCS is making several adjustments to ensure that its references to Technical Service Providers in the EQIP regulation are consistent with the Technical Service Provider regulation at 7 CFR part 652. Therefore, NRCS has amended § 1466.11(c) to read as follows: "Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to: conservation planning; conservation practice survey, layout, design, installation and certification; information, education, and training for participants; and related technical services as defined in 7 CFR part 652."

Additionally, NRCS also changed the definition of TSPs in § 1466.3 to read as follows: "Technical Service Provider means an individual, entity, Indian tribe, or public agency either:

(1) Certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or
(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department."

Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS. Dependent upon the availability of funds, NRCS provides technical assistance for all contract participants requesting TSP services. NRCS is authorized by statute to provide financial assistance to agricultural producers for the development of CNMPs and other plans such as Conservation Activity Plans (CAPs). NRCS can provide financial assistance funds to TSPs if they are through producer contracts for approved CAPs. NRCS can use technical assistance funds through agreements to enlist TSPs to do multiple CNMPs for multiple producers.

Transparency

Government transparency is furthered by public access to various government documents and information. NRCS supports open government to the extent authorized by law. Several statutory provisions limit the disclosure of Federal information where the release of such information may adversely affect an individual's privacy or other confidential matters. In particular, release of EQIP documents is governed by the FOIA, the Privacy Act, section 1619 of the 2008 Act, and section 1244 of the Food Security Act of 1985. NRCS will provide as much transparency as possible concerning funding usage while adhering to the FOIA and Privacy Act requirements. Section 1619 of the 2008 Act prohibits

NRCS from releasing any information specific to a producer's operation, practice, or the land itself in order to participate in USDA programs. NRCS will continue to aggregate information about the EQIP program including kinds of practices and extent and funding associated with contacts at the State and national levels. Section 1466.20(b)(6) of the EQIP rule specifies that the State Conservationist will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how the EQIP program is implemented in the State. At the national level, NRCS posts information concerning EQIP at www.nrcs.usda.gov/programs/EQIP.

Tribal Issues

Between October 2010 and January 2011, NRCS participated in seven Interagency Tribal consultation meetings held across the nation. The effort was coordinated by the USDA Office of Tribal Relations and provided an opportunity for Tribal leaders to comment in person on the 2008 Act programs.

In response, NRCS has made several adjustments to the EQIP final rule:

The term Tribal Conservation Advisory Council was added wherever applicable to more accurately portray relationships of these bodies in providing advice to the State Conservationist. The term Indian tribes and tribal were included throughout the regulation to ensure clarity in program delivery, and language was added to ensure more clarity concerning NRCS' relationship with BIA. NRCS also clarified terms and definitions to better explain the purposes of the program and eligibility requirements for Indian tribes. For example, NRCS has incorporated provisions to clarify to that payment and contract limitations do not apply to Indian tribes but apply to individual tribal member(s). In § 1466.21(d) Contract requirements, NRCS clarified that Indian tribes are not subject to the EQIP contract limitation of $450,000.

Other EQIP Administrative Adjustments

The following changes to §1466.3 definitions were made to clarify program administration and ensure consistency in program implementation:

- Conservation practice: NRCS amends the definition, "conservation practice," to clarify that approved conservation practices are listed in the NRCS Field Office Technical Guide.
- Indian tribe: NRCS has included the word "pueblo" in the definition of Indian tribe. Although pueblo is encompassed in the term other organized group or community, NRCS is adding the term to provide additional clarity to the interim rule that pueblos are included as one of these recognized communities consistent with Departmental regulation.
- Limited resource farmer and rancher: NRCS amends the term, "limited resource farmer and rancher," by replacing the reference to "$155,200" with "the current indexed value." Since the value used for determining limited resource farmer and rancher adjusts each fiscal year, NRCS adjusted the EQIP definition to correspond with the definition used more widely throughout the Department.
- Priority resource concern: NRCS revises the term "priority resource concern" to align program terminology with other conservation programs administered by NRCS by clarifying that a priority resource concern is a "natural" resource concern
- Regional Conservationist: NRCS has removed the term Regional Assistant Chiefs in § 1466.3 to be consistent with NRCS organizational structure that the Chief or the Chief's designee makes EQIP decisions.
- Resource concern: In order to be consistent with other NRCS financial assistance programs, NRCS has amended the definition for resource concern. In the January 2009 interim final rule, NRCS defined resource concern as "a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementation of the conservation activities by producers." NRCS has amended the definition to read as follows: "Resource concern means a specific natural resource problem that represents

a significant concern in a State or region, and is likely to be addressed successfully through the implementation of the conservation practices by participants."

NRCS made additional administrative changes to the following EQIP sections:

§1466.4 National priorities.
Section 1466.4, "National Priorities," identifies the national priorities for program implementation. Prior to the publication of the January 2009 interim final rule, NRCS identified these national priorities through public feedback in order to ensure that the stated national priorities reflected the most pressing natural resource needs. NRCS makes three minor adjustments to §1466.4 by: 1) adding energy conservation; 2) replacing "resource concern" with "natural resource concern"; and 3) clarifying that the promotion of at-risk species habitat conservation includes the development and improvement of wildlife habitat. Pursuant to the 2008 Act's authorization of the use of EQIP to address on-farm energy conservation benefits, NRCS has implemented the "EQIP On-Farm Energy Initiative" to enable a producer to identify ways to conserve energy on the farm through an Agricultural Energy Management Plan (AgEMP), also known as an on-farm energy audit; and by providing financial and technical assistance to help the producer implement various measures and practices recommended in an on-farm energy audit.

§ 1466.5 National allocation and management and § 1466.6 State allocation, and management have been removed from the EQIP rule. In addition to incorporating the changes made by the 2014 Act, NRCS is taking this opportunity to clarify a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the EQIP rule by clarifying streamlining the regulation to focus upon only those provisions that relate to conservation program participants rights and responsibilities under the programs. NRCS is removing these two sections as they relate to internal fund allocation management, which are internal agency administrative procedures and do not affect the rights and responsibilities of EQIP participants. NRCS has utilized a formula for allocation of EQIP funds to States based upon factors established at § 1466.5. Based upon both internal and external comment, NRCS recognized that the existing process did not adequately identify priority resource needs, the locally-led process, or information available at the State level which could provide more comprehensive data to make allocation decisions.

In FY 2011, NRCS developed a new allocation process based upon State-generated assessments of priority natural resource needs and associated work necessary to address identified resource concerns. These State developed assessments, following national guidance to assure accuracy and consistency, were reviewed with partners, stakeholders, other agencies, and others to quantify resource needs, priorities, agency goals, workload and available resources, and program opportunities to support direct requests from State Conservationists. These requests were submitted to agency leadership for review and final EQIP allocations were based upon all requests and needs. This approach provides flexibility to address nationally and locally important natural resource concerns and provides a more reliable and accurate estimate of each State's needs, which in turn can be used to better inform the allocation process.

NRCS removes the reference to "small-scale farms" since this term is not used or defined in the EQIP statute. Even so, NRCS will continue to ensure that program assistance is provided in a balanced manner that recognizes the differences between agricultural operations, and maintains the use of the term "small-scale farms" in §1466.5, "Outreach Activities". Section 1466.5 describes how NRCS will establish special program outreach activities at the national, State, and local levels, and is re-organized to assist clarity.

§ 1466.22 Conservation practice operation and maintenance.
In order to clarify NRCS operating procedures, NRCS has amended § 1466.22(c) to read: "Conservation practices installed before the contract execution, which are required in order to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and OM agreement."

§ 1466.27 Conservation Innovation Grants.
In order to clarify NRCS operating procedures, NRCS has amended § 1466.27(a)(3) to read: "*Grant Review Board* consists of representatives of NRCS staff as determined by the Chief. The Review Board makes recommendations for grant awards to the Chief."

Finally, throughout 7 CFR part 1466, NRCS simplifies the regulatory cross-references by replacing language such as "Part 1400 of this chapter" with "7 CFR part 1400."

As it relates to program delivery, EQIP utilizes the state technical committees and local working groups to implement the program to address identified needs and concerns based on local communities.

The 2014 EQIP criteria also require NRCS ensure national, State, and local priorities are effectively addressed. Applications will be prioritized in accordance with, but not limited to, the following criteria:

- The degree of cost-effectiveness of the proposed conservation practices;
- The magnitude of the expected environmental benefit conservation benefits resulting from the conservation treatment and the priority of the resource concerns that have been identified at the local, State, and national levels;
- How effectively and comprehensively the project addresses the designated resource concern or resource concerns;
- Use of conservation practices that provide long-term environmental conservation enhancements;
- Compliance with Federal, State, Tribal, or local regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation; and
- Willingness of the applicant to complete all conservation practices in an expedited manner.

The ability to improve existing conservation practices or systems, which are in place at the time the application is accepted, or that complete a conservation system. Any producer who is eligible may submit an application for participation in EQIP at a USDA service center. Information will be provided through media, websites and in person that explains the process to request assistance. Applications will be accepted throughout the year, although the agency will establish cut-off dates where eligible applications will be ranked and approved for funding.

C. Historical Participation Data

Historical data reflecting participation in EQIP has been maintained. Participant reporting of demographic information is voluntary; and third party reporting is allowed by agency employees. However, the data reporting has been deemed unreliable, especially as it relates to disabilities. Due to the reliability of the historical compatible data maintained, a full barrier analysis on participation was not conducted.

NRCS Civil Rights Division is working with the Office of Outreach and Advocacy (OOA) and the Deputy Chiefs for Programs and Strategic Performance and Accountability to implement an evaluation and monitoring tool for the Agency to more fully comply with DR4370-001 (10/11/11) Collection of race, ethnicity, and gender data to account for those business entities and organizations that have not yet reported Race or gender information. However, a preliminary review of the participation data appears to indicate program parity in relation to Agricultural data collected by NASS.

Conducted since 1840, the Census of Agriculture accounts for all U.S. farms and ranches and the people who operate them. The Census tells a story of how American agriculture is changing and lays the

groundwork for new programs and policies that will invest in rural America; promote innovation and productivity; build the rural economy; and support our next generation of farmers and ranchers. The following participation data for the three (3) year period from FY 2011-2013 has been supplied. It should be noted that Participation rates in the following charts refers to contracts not applications. Applicants are considered as to be potentially eligible participants. The data participation numbers are also incomplete in that it does not include persons or business entities that did not report race or gender.

	2012	2007
Total	**2,109,303**	**2,204,792**
Male operators -	1,821,039	**1,898,583**
Female Operators -	288,264	**306,209**

The overall number of Operators (male and female) decreased from 2007 to 2012.

White –	2,012,652;	**2,114,325**
Black –	**33,371**	30,599
American Indian –	**37,851**	34,706
Asian –	**13,669**	11,214
Native Hawaiian (Pac Isl) –	**1,468**	1,356
More than 1 race –	10,292	**12,592**

Hispanic is considered an ethnicity. The number of Hispanic Principal Operators are reported as follows with the following breakdown for race:

Total	**67,000**	55,570
AI/AN	**1,745**	1,697
Asian	**667**	604
Black -	**612**	597
Native Hawaiian/PacIsl	**225**	204
White	**63,064**	51,869
More than 1 race	**687**	599

All categories of minority-operated farms increased between 2007 and 2012; the Hispanic-operated farms had a significant 21 percent increase.

2011

EQIP	Male	Female	American	Asian	African	Hispanic	White
	Incl all races	Incl all races	Indian	American	American		
Number of Contracts	25,947	5,667	632	324	1,065	884	32,414
Funds Awarded	545,447,605	103,687,778	27,345,388	11,832,046	11,730,919	19,048,082	723,935,389
Percentage of Principal Operators in National	1.42	1.97	1.67	2.37	3.19	1.32	1.16
Percentage of Dollars Awarded	68.2%	13.0%	3.4%	1.5%	1.5%	2.4%	90.5%

EQIP

	Male	Female	American Indian	Asian American	African American	Hispanic	White
Number of Applications	2157	675	1359	751	1975	1864	78982
Number Approved	1063	374	766	369	1299	1005	39039
Percentage Approved	49.3%	55.4%	56.4%	49.1%	65.8%	53.9%	49.4%

In 2011 the above charts appear to indicate that African American operators as a percentage of their national population are participating at the highest rate (3.19) compared to other races. Additionally, females (1.97%) are participating at a higher percentage rate compared to their male (1.42%) counter parts. All minority groups, are participating at higher percentage rates than their White counter parts. The proportion of White operators in comparison to total White Operators indicates that they are participating at 1.16%, which is less than Hispanic (1.32%), American Indian (1.67%), Asian (2.37%) and Black (3.19%) operator participation in comparison to their overall populations.

The number of applications received mirrors the participation rates of the various groups. However, the approval rates for the applications places Black, AI/AN, and Hispanic operators at higher percentages than White and Asian Operators.

2012

EQIP	Male	Female	American Indian	Asian American	African American	Hispanic	White
Number of Contracts	31,061	6,758	1,005	461	1,370	1,178	38,642
Funds Awarded	637,917,215	130,048,403	31,757,105	15,712,067	18,029,066	24,920,832	839,262,643
Percentage of Principal Operators in National	1.71	2.34	2.65	3.37	4.10	1.17	1.91
Percentage of Dollars Awarded	67.3%	13.7%	3.3%	1.7%	1.9%	2.6%	88.5%

	Male	Female	American Indian	Asian American	African American	Hispanic	White
Number of Applications	3922	1329	2310	1091	2618	2300	96773
Number Approved	1797	602	1119	493	1522	1311	44149
Percentage Approved	45.8%	45.3%	48.4%	45.2%	58.1%	57.0%	45.6%

2013

EQIP	Male	Female	American Indian	Asian American	African American	Hispanic	White
Number of Contracts	32,771	6,898	799	558	1,467	1,405	40,395
Funds Awarded	677,437,761	137,021,931	25,155,649	18,272,448	19,243,689	29,633,700	879,294,968
Percentage of Principal Operators in National	1.80	2.39	2.11	4.08	4.39	2.10	2.00
Percentage of Dollars Awarded	68.4%	13.8%	2.5%	1.8%	1.9%	3.0%	88.8%

	Male	Female	American Indian	Asian	African American	Hispanic	White
EQIP							
Number of Applications	71,292	14,223	2,124	1,160	2,729	2,345	89,151
Number Approved	32,783	6,924	808	560	1,472	1,413	40,607
Percentage Approved	46.0%	48.7%	38.0%	48.3%	53.9%	60.3%	

A review of the 2012 and 2013 data in comparison to the 2011 program participation data shows an overall increase in participation among all races and genders. The exception would be that in 2013, AI/AN participation decreased in comparison to other groups. However, it was still a significant increase from 2011 participation rates. Although a barrier analysis has not been conducted, it is believed that part of this decrease is due to the fact that most AI/AN contracts are with tribal entities for tribal land. In addition, a trend noted in the compliance review interviews with AI/AN program participants indicated that because of the unique land ownership issues associated with Indian land, NRCS contracts with AI/AN are more frequently made with tribes and tribal entities as opposed to individual Indian land owner.

Fractionated land can only qualify for program participation when the control and ownership can be properly documented. Additionally, the settlement of Cobell, Salazar and Keepseagle (All AI/AN class action law suits) are impacting individual land holdings and tribe that are being given the opportunity to participate in buy-back programs are using their financial resources to consolidate land interests. It is also anticipated that the change in payment limitations for AI/AN will increase program participation.

It was also noted that Hispanics had the highest application approval rate, despite not having the highest percentage of participating percentage of the national operator populations. A more in-depth analysis might identify the reason for this change in approval rates, however, Hispanics were noted by NASS to have a 21% overall increase in their operator population.

NRCS also complies with the law in regards to the assessment and evaluation of compliance for the Agency's federally assisted and conducted programs. On a cyclic, 5 year basis, the Agency's Civil Rights Division conducts a thorough Civil Rights Compliance Review. Program participation data is reviewed for parity to ensure equitable program participation opportunities and freedom from potential barriers.

NRCS has also invited the OASCR compliance staff to participate in the NRCS compliance review process.

D. Eligibility Criteria

Statute provides that producers who are engaged in crop, livestock and nonindustrial private forestry or livestock production on eligible land are eligible for the EQIP program. Eligible land includes cropland, rangeland, grassland, pasture, nonindustrial private forest land, and other land on which agricultural products, livestock, or forest-related products are produced and resource concerns may be addressed. Other agricultural lands may include cropped woodland, marshes, and other types of agricultural land used for production of livestock. 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 a working component of the participant's agricultural and forestry operation, and

(ii) The participant has control of the land for the term of the contract, and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified natural resource concern; or

(3) Indian land.

E. Outreach Strategy

The NRCS Director of Communications and the Director of Office of Outreach and Advocacy (OOA) provides and coordinates training regarding outreach strategies necessary to inform all segments of the affected public about the EQIP final rule. NRCS uses program Fact Sheets, which are developed at the national level (see attached) and disseminated to all state offices. Each state has their own Public Affairs Specialist which works with the field offices to further advertise program availability. Each state conducts outreach consistent with the local partners and provides the NRCS Civil Rights Division with their annual outreach plan and provides an update to the plan in the Bi-annual State Civil Rights Performance Report. Public notification and outreach will be aggressively expanded to include news releases, radio and TV spots, publications, and brochures to ensure those traditionally under-served will have an equal opportunity to benefit from the proposed rule.

The Financial Assistance Programs Division (FAPD) of NRCS will work in partnership with the NRCS - OOA to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed EQIP rule will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained to reach 52 Land-Grant Universities, seventeen (17) 1890 Land-Grant Universities, 192 HACU colleges and universities located in six (6) U.S. Territories, and 32 Tribal Colleges and Universities.

In support of transparency and efforts to expand opportunities for participation, FAPD will submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgrAbility Project (approximately 22,000-30,000 farmers with disabilities receive the Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint under-served producers with the newly proposed EQIP rule. Spanish-translated press releases and informational materials will be made available, consistent with the Departmental regulations on Limited English Proficiency.

NRCS Civil Rights Division is working OOA and the Deputy Chief for Programs and Deputy Chief for Strategic Performance and Accountability to implement an evaluation and monitoring tool for the Agency to comply with DR4370-001 (10/11/11). Collection of race, ethnicity, and gender data for civil rights compliance and other purposes in regard to participation in the programs administered by the Farm Service Agency, the Natural Resources Conservation Service, the Risk Management Agency, the Rural Business Service, the Rural Housing Service, and the Rural Utilities Service; and DR4370-002 (11/28/11) Providing a Receipt for Service or Denial of Service by the Farm Service Agency, the Natural Resources Conservation Service, the Rural Business Service, the Rural Housing Service, and the Rural Utilities Service. It is believed that the process instituted will assist in providing a better assessment of the correlation of outreach and program participation.

Encouraging Community Involvement and Locally-Led Conservation

Local NRCS field offices will continue to encourage community involvement and locally-led conservation activities they have underway. Locally-led conservation is helping community stakeholders to:

- Assess their natural resource conservation needs;
- Set community conservation goals;
- Develop an action plan;
- Obtain resources to carry out the plan;
- Implement solutions; and
- Measure their success.

The locally-led process provides for input from a broad range of agencies, organizations, businesses, and individuals in the local area who have an interest in natural resource management and are familiar with the local resource needs and conditions. Through this input process there is the opportunity for minority and socially disadvantaged groups to indicate how to address their natural resource concerns. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

Tribal Impact Statement

Pursuant to EO 13175, there is no negative impact for American Indians, America Indian tribes, and tribal entities. To the contrary, specific language was included in the 2014 version of the EQIP rule that allows a special funding arrangement for American Indian tribes. It is hoped this will increase American Indian tribal participation.

NRCS has also worked with the Office of the Secretary, Office of Tribal Relations, to provide informational outreach opportunities directly to tribes. (See ATTACHMENT 1 for Tribal Outreach Plan)

F. Barrier Removal Provisions

The interim final rule incorporates features to address potential disparities for producers who are members of a protected group. One of these is the establishment of a national target to set aside of 5 percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers. This increased funding may result in a much higher application approval rate. Conservation payments generally provide a fairer distribution of benefits among farmers and landowners across the nation than do other farm programs such as commodity subsidies because of:

- payment limitations, and
- a greater number of farmers and ranchers are eligible to apply to participate.

The interim final rule will address major systemic barriers for producers who have historically experience distinct disadvantages in obtaining USDA program assistance by inducing and helping them to enter farming by providing incentive payments and by assisting with a higher percentage of the cost-share payments to participate. Specifically, this interim final rule provides: socially disadvantaged farmers and ranchers a higher payment rate than the rate adopted under the past EQIP regulations; advance payments to historically underserved producers; and establishes a national target to set aside 5 percent of the funds for beginning farmers and ranchers and an additional 5 percent of the funds for socially disadvantaged farmers and ranchers. The 2014 Act added an additional priority to this funding pool in relationship to these farmers who are also veterans.

A Limited Resource Farmer or Rancher meets the economic threshold and qualifies for the higher cost share if they meet the following characteristics:

- Is an individual with direct or indirect gross farm sales not more than $100,000 in each of the previous two years, and
- Has a total household income at or below national poverty level for a family of four, or has less than 50% of county median household income, in each of the previous two years.

Beginning Farmer or Rancher means a person or legal entity who:

- Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and will materially and substantially participate in the operation of the farm or ranch.
- In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.
- In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

The EQIP rule defines a socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. This term means a farmer or rancher who is a member of a socially disadvantaged group. Specifically, a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan Natives, Hispanics, and Asians or Pacific Islanders. It should be noted that NRCS programs are not credit based programs, they are cost share incentives and the Equal Credit Opportunity Act, which affords certain protections to members of this group, does not apply.

A veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

Outreach and communication strategies will be in place to ensure all producers are provided the same information to decide if they wish to participate in EQIP. NRCS will provide benefits to all producers regardless of their status as it relates to race, national origin, gender or disability.

G. Conclusion

The civil rights review of the EQIP interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. It is believed that the barrier elimination provisions from the 2008 Act combined with the added provision for including veterans in the 2014Act as a target group will increase participation rates for EQIP. Increased payment rates and advance payments for historically underserved producers, coupled with the national target of setting aside 5 percent of EQIP funds for socially disadvantaged farmers and ranchers and an additional five percent of EQIP funds for beginning farmers and ranchers did in fact increase overall program participation between 2009 and 2013 among these groups. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs in proportion to population parameters with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including the EQIP, will continue to be administered in a non-discriminatory manner.

Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. EQIP eligibility and program requirements apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the EQIP rule portends no adverse civil rights implications for women, minorities, Tribes, or persons with a disability.

H. Certification

I certify that the review and analysis of the 2014 EQIP Interim Final Rule has been conducted in accordance with DR 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and DR 1512-1, "Regulatory Decision-Making Requirements." The EQIP interim final rule portends no adverse civil rights implications for women, minorities, Tribes, or persons with a disability.

Selina Lee

Selina Lee
Director, Civil Rights Division
Natural Resources Conservation Service

9-16-2014
Date

ATTACHMENT 1

NRCS 2014 Farm Bill Tribal Outreach/Collaboration Plan

Issue:

The purpose of this document is to provide a framework for collaborating with Federally recognized tribes that have an interest in the NRCS conservation provisions of the 2014 Farm Bill to ensure greater conservation access in Indian Country.

Background:

Executive Order 13175 and Departmental Regulation 1350-002 requires that agencies establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. NRCS policy for interaction with Indians Tribes and their members in fulfilling trust responsibilities is defined in General Manual 410, Part 405.

There are approximately 563 federally recognized tribes, with the majority, located in the western half of the United States. The majority of these tribes are agricultural land holders and many have an interest in the conservation provisions of the 2014 Farm Bill. Therefore, it is imperative that collaboration with tribes occurs in an appropriate and timely manner.

Options Considered

To fulfill its obligation in providing an opportunity for tribes to have adequate input into NRCS conservation provisions of the 2014 Farm Bill, NRCS will invite all federally recognized tribes to participate in collaboration sessions. Internally, NRCS discussed and considered the following options for collaborating with federally recognized tribes on the 2014 Farm Bill.

1. NRCS State Conservationists collaborate with the individual tribes in their respective states.
2. NRCS Regional Conservationists conduct four strategically located collaboration meetings.
3. NRCS National Office conducts one national collaboration meeting and invites all of the tribes to participate.
4. NRCS conduct a series of strategically timed webinars and invite the tribes to participate.

Recommended Approach: Multi-level Approach to Ensure Effective and Meaningful Tribal Outreach/Collaboration

1) Host Regional Tribal Conservation Advisory Council Meetings
2) Engage tribes at national, regional and state meetings
3) Host State-level engagements through State Technical Committees and State Tribal Advisory Councils.
4) Host Regional collaboration sessions through webinars (invite tribal members to USDA facilities)
5) Enter into agreements with national tribal organizations to conduct outreach, collaboration and training (including the Indian Nation Conservation Alliance, Intertribal Agriculture Council, and United South and Eastern Tribes)

Due to the vast number of federally recognized tribes and the likely short turnaround time available to collaborate with the tribes before final rules are published, NRCS will collaborate with the tribes through a series of strategically timed webinars. This direction is not intended to minimize the importance of staff to staff communication and collaboration between the states and the tribes at the local level. In fact, NRCS State Conservationists are encouraged to utilize their state, area and county tribal liaisons and other staff to explain conservation provisions of the 2014 Farm Bill and to receive input from the tribes for use in developing rules and policy.

In addition to the webinars, NRCS will reach out to tribal organizations and seek opportunities to partner and collaborate with tribes at national, regional and state meetings. State Conservationists will also use State Technical Committees and State Tribal Advisory Councils as avenues for collaborating with tribes on the 2014 Farm Bill.

The webinars will be hosted by the appropriate Regional Conservationist with assistance from the appropriate NHQ program managers and Outreach staff to explain program changes from 2008 and also discuss other identified tribal issues. During the webinars, tribes will have the opportunity to comment and ask questions.

Collaboration Timeline **Event**

February 1, 2014	2014 Farm Bill enacted		
February 19, 2014	Webinar	California Tribes	
March 5, 2014	Webinar	Western Region Tribes except, AK and CA	
March 19, 2014	Webinar	Central Region Tribes	
April 2, 2014	Webinar	Northeast and Southeast Region Tribes	
April 16, 2014	Webinar	Alaska tribes	

National and Regional Tribal Meetings

February 3-6, 2014	United South Eastern Tribes	Arlington, VA
March 18-20, 2014	INCA Climate Change Workshop	Camp Verde, AZ
April 14-17, 2014	2nd Annual Native Food Sovereignty Summit	Green Bay, WI
May 4-8, 2014	2014 tribal Self-Governance Consultation Conference	Arlington, VA
Late Summer 2014	INCA Climate Change Workshop	TBD
TBD	NRCS East Regional Tribal Conservation Advisory Council	TBD
TBD	NRCS West Regional Tribal Conservation Advisory Council	TBD
TBD	NRCS Central Regional Tribal Conservation Advisory Council	

Rather than collaborating on overall program implementation or all of the provisions in a regulation, NRCS will collaborate with tribes on:

- Specific issues on the 2014 Farm Bill provisions for each NRCS program regulation that impact or may impact tribes and their members. Focusing on specifics will help ensure more meaningful dialogue and will provide an opportunity to key in on items that may affect tribes and their members' ability to fully participate in NRCS programs. ***(Items will be identified and provided to the tribes in advance of webinars to provide ample time for tribal review)***
- General tribal issues that have been identified at the state level or through the (3) recently established Regional Tribal Conservation Advisory Councils.
- Issues already identified by the Regional Conservationists
- Other programmatic issues of interest to tribes

NRCS is keenly aware that all tribes may not have access to the necessary technology to participate via webinar. As such, NRCS will make extra effort to ensure tribes have access to NRCS facilities at the location nearest their tribal headquarters.

These webinars also provide an opportunity for NRCS to partner with other interested USDA Service Agencies in collaborating with tribes on the 2014 Farm Bill.

NRCS will ensure that the tribal recommendations and input from the sessions will be provided to the appropriate NRCS Division Director for full consideration into any program Final Rule.