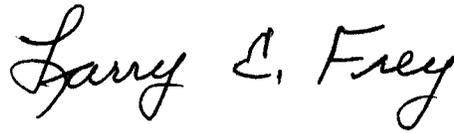


For: Oregon County Offices

EQIP - Interim Implementation

Approved by: Larry E. Frey, State Executive Director



1 Overview

A Background

To provide County Offices with a copy of a joint NRCS/FSA memorandum and attachment.

The memo and attachment provide additional guidance for FY2002 contracts and supercedes relevant sections in the current EQIP manual.

2 Action

A COF Action

COFs shall review the bulletin and attachment in their entirety and file them with the EQIP manual.

Disposal Date:

January 1, 2003
8/5/02

Distribution:

Oregon County Offices,

OR Notice CONOP-20

United States Department of Agriculture



Natural Resources Conservation Service
101 S.W. Main, Suite 1300
Portland, Oregon 97204-3221

Subject: LTP – Interim Implementation of Environmental Quality Incentives Program (EQIP) Resulting from the 2002 Farm Bill
Date: August 5, 2002

To: All Offices, NRCS, Oregon
File Code: 300-19

File this memo and attachments with the EQIP manual.

The following memorandum provides additional guidance for FY2002 contracts and supercedes relevant sections in the current EQIP manual.

1. Revised CCC-1200 Appendix

The revised CCC-1200 Appendix is attached. All FY2002 EQIP contracts must include this revised CCC-1200 Appendix signed by the producer. NRCS is responsible for obtaining the producer's signature.

2. Handling of FY2002 EQIP Contracts and Applications

All FY2002 contracts must meet all requirements of the new Farm Bill such as the development and implementation of a CNMP on contracts with waste storage/treatment facilities.. Before approving a contract, the Designated Conservationist will check with the FSA County Office to ensure that sufficient unobligated funds are available. See item # 4.

3. FSA Responsibilities

FSA offices shall continue to provide services for all previous year EQIP contracts and FY2002 applications and contracts funded by the initial FY2002 allocation, EXCEPT for the following program responsibilities that transferred to NRCS as provided in Notice CONOP-14, paragraph 3B; tasks directly related to those transferred responsibilities; and authorization to disburse funds on CCC-1245 as provided in Item 6 below. Tasks directly related to those transferred responsibilities include preparing and signing letters to producers notifying them of contract approval or cancellation and application deferral or disapproval, and ensuring contracts are not signed on behalf of CCC in excess of allocations.

The reimbursable agreement covering FSA administrative services to be provided for FY2002 EQIP contracts funded by the additional allocation is being negotiated at the national level. Once the reimbursable agreement is signed, it is anticipated that State and county FSA offices and State and local NRCS offices will be notified of the tasks for which each agency is responsible.

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4. Fund Tracking

Agreement with FSA has transferred the authority to approve contracts, contract modifications, contract terminations and authorizations for payment (CCC-1245) to NRCS. NRCS assumed the authority of signing contracts and ensuring that funds will not be over-obligated. FSA will continue to maintain the ledgers to provide funds tracking of allocations and obligations.

For initial FY2002 allocations, upon receipt of this memo, each county FSA office shall determine the amount of unobligated funds on the ledger and provide this information to the Designated Conservationist. Before signing contracts the Designated Conservationist will check with the county FSA office to ensure sufficient funds are available. Before signing the CCC-1245 to authorize the disbursement of payment for the last practice on a contract, the Designated Conservationist will check with the county FSA office to ensure that sufficient funds remain in the contract or, if not, to initiate a EOA request, if applicable. After the fiscal year in which a contract is approved, funds may be increased to a contract only for approved errors, omissions and appeals.

5. Authorized Local Agent (Designated Conservationist)

Agreement with FSA has transferred the authority to approve contracts, contract modifications and authorizations for payment (block 25 on the CCC-1245) to NRCS. In Oregon, the Basin Team Leaders will be designated as the employees who have authority to approve contracts, contract modifications, contract terminations and authorize payments.

6. Payment Limits and Animal Unit Limits are not Discretionary

The EQIP sections of the 2002 Farm Bill provide the Secretary with discretion for many decisions; e.g. 1240B(d)(2)(B) cost-share rate: ...shall not be more than 75 percent of the cost of the practice, as determined by the Secretary.

Two areas without discretion include: first, the amount of EQIP funding that a producer may receive in one or from multiple EQIP contracts is \$450,000. There is no authority to set the limitation at less than \$450,000. Second, there is no authority to limit access to program benefits because of the number of animal units on the operation. All animal operations, regardless of size, are eligible for all EQIP program benefits.

7. Limited Resource Producers and Beginning Farmers

The 2002 Farm Bill gives the Secretary discretion to provide Limited Resource Producers and Beginning farmers up to 90 percent cost-shares for structural practices. This provision will not be available for the remainder of FY2002 and will be implemented when the revised EQIP rule is finalized sometime in early FY2003.

OR Notice CONOP-20

8. EQIP Contracts per Tract

The 1996 EQIP Rule (7CFR1466) limits to one the number of active EQIP contracts on a tract. Both the 1996 and 2002 Farm Bills are silent on this issue, therefore, this provision in the rule has not been changed. It is anticipated that the revised rule will allow more than one contract per tract and this provision will be implemented when the revised EQIP rule is finalized in FY2003.

9. Comprehensive Nutrient Management Plan (CNMP) Requirements

The 2002 Farm Bill requires that confined livestock feeding operations and any contract that includes an animal manure management system will provide for the development and implementation of a comprehensive nutrient management plan (CNMP). The CNMP requires proper use of the animal manure and wastewater, regardless of land base, through nutrient management and/or other manure and wastewater utilization options.

10. Appeals

It is anticipated that appeals will continue to be handled according to Handbook 1-APP and CPM, Part 510. NRCS non-technical appeals will be handled in the same manner as technical appeals. Notification of non-appealable EQIP issues shall be made by NRCS.

The authorizing language in the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Section 226, provides that for any adverse decision made under Title XII Conservation Programs of the Food Security Act of 1985, including technical determinations made by NRCS, FSA shall have initial jurisdiction over the administrative appeal.

BILL WHITE
Leader - Programs

cc:
Fred Ringer, FSA, Tualatin, Oregon

U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

APPENDIX TO FORM CCC-1200
ENVIRONMENTAL QUALITY INCENTIVES PROGRAM CONTRACT

1 ELIGIBILITY REQUIREMENTS FOR ENVIRONMENTAL QUALITY INCENTIVES PROGRAM (EQIP)

- A** By signing the EQIP contract, the participant certifies that such participant will control the land subject to the contract for the contract period and shall, upon demand, provide evidence to CCC demonstrating that such participant will control the land for that period.
- B** A participant shall not be eligible for cost-share or incentive payments on practices on eligible land if the participant receives or has received cost-share payments or other benefits for the same practice on the land under the Conservation Reserve Program (7 CFR Parts 704 or 1410), Wetlands Reserve Program (7 CFR Parts 703, 620, or 1467) or Environmental Quality Incentives Program (7 CFR 1466).
- C** Land otherwise eligible for the EQIP shall not be eligible if the land is subject to a deed or other restriction prohibiting the application of the conservation plan and associated practices or where a benefit has or will be obtained from a Federal agency in return for the participant's agreement not to implement the conservation plan and associated practices on the land during the same time as the land would be enrolled in the EQIP. By applying for the EQIP contract, the participant certifies as a condition for payment that no such restrictions apply to such land.

2 SELECTING OFFERS FROM PRODUCERS

- A** All applications will be evaluated using a selection process developed locally by the State Conservationist or Designated Conservationist, with advice from the State Technical Committee or Local Work Group.

3 AGREEMENT

- A** The participant agrees:
 - (1) That the CCC-1200 (EQIP contract) and its addenda shall be considered a request to enter into the Environmental Quality Incentives Program on the terms specified on CCC-1200 and its addenda;
 - (2) To place eligible land into the EQIP for a period of time as specified on the CCC-1200 (not less than one year after the last practice is installed and not to exceed 10 years), from the date the contract is executed by CCC;

- (3) Not to start any financially assisted practice before the contract is executed by CCC. The participant may be granted a waiver to this requirement by the NRCS State Conservationist or designee;
- (4) To comply with the terms and conditions of the EQIP plan of operations and all Federal, State, and local laws that apply to the plan content;
- (5) To establish, maintain for required lifespans, and replace, as specified in the contract, the practices agreed to in the EQIP plan of operations;
- (6) Not to undertake any action on land under the participant's control which tends to defeat the purposes of this contract, as determined by CCC;
- (7) To discontinue work in the general area of the site and notify NRCS immediately if during the construction of any practice a previously unidentified archeological or historical site is encountered;
- (8) To maintain proof of payment documentation, if applicable, for 3 years after the end of the fiscal year in which the practice was completed and to present this documentation to CCC within 30 days if selected for administrative compliance check; and
- (9) For contracts that include a waste storage or treatment facility, to develop and implement all practices identified in a comprehensive nutrient management plan; or
- (10) For contracts funded under section 1240I, Surface and Ground Water Conservation, to implement a program of conservation measures that will result in a net savings of ground and surface water resources in the agricultural operation of the producer.

B CCC agrees, subject to the availability of funds, to:

- (1) Share the cost with owners and operators of establishing an eligible practice, or an identified unit thereof, agreed to in the contract;
- (2) Reimburse the cost of developing a comprehensive nutrient management plan including the siting of and design of a waste storage/treatment facility if the plan and design is prepared by a certified third party vendor.
- (3) Pay to the participant an interest penalty on cost-share and incentive payments not made by the date, as determined by CCC, the payment is due.

4 ENVIRONMENTAL QUALITY INCENTIVE PLAN OF OPERATIONS

A By signing the EQIP contract, the participant agrees to implement the practices specified in said contract on the land specified.

5 PAYMENTS

- A** Subject to the availability of funds, cost-share and incentive payments, as approved by CCC, shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the EQIP plan of operations and with appropriate standards and specifications.
- B** Subject to the availability of funds, reimbursement of the technical assistance cost of developing a comprehensive nutrient management plan (CNMP) including the siting of and design of a waste storage/treatment facility if the plan and design is prepared by a certified third party vendor, as approved by CCC, shall be made available upon a determination by CCC that a plan and design has been established in compliance with NRCS stands and specifications.
- C** CCC will make cost-share and incentive payments, as approved by CCC, available to the participant at the rate specified in the EQIP contract.
- D** Except as otherwise provided for in this paragraph, cost-share and incentive payments, as approved by CCC, may be made available under the EQIP only for the establishment or application of an eligible practice. In order to receive cost-share and incentive payments or reimbursement of technical assistance for a CNMP provided by a certified third party vendor, as approved by CCC, the participant, upon certification of the completion practice, must file Form CCC-1245 with CCC at the USDA Service Center responsible for the administration of the participant's farm records.

6 PROVISIONS RELATING TO TENANTS AND LANDLORDS

Notwithstanding Paragraph 13, no payment will be approved for the current year if CCC determines that any of the following conditions exist:

- A** The landlord or operator has not given the tenants that have an interest in the unit of concern covered by the conservation plan, or that have a lease that runs through the CCC-1200 period at the time of sign up, an opportunity to participate in the benefits of the program;
- B** The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded with interest and no further payments shall be made.

7 ERRONEOUS REPRESENTATION AND SCHEME AND DEVICE

- A** A participant who is determined to have erroneously represented any fact affecting a determination with respect to this contract and the regulations applicable to this contract, adopted any scheme or device which tends to defeat the purposes of this contract, or made any fraudulent representation with respect to this contract, will not be entitled to payments or any other benefits made in accordance with this contract and the participant must refund to CCC all

payments received by such participant, plus interest and liquidated damages thereon, with respect to the contract.

B Refunds determined to be due and owed to CCC in accordance with this contract will bear interest at the rate which CCC is required to pay for its borrowing from the United States Treasury on the date of the disbursement by CCC of the moneys to be refunded. Interest will accrue from the date of such disbursement by CCC.

C The provisions of paragraph 7A of this Appendix shall be applicable in addition to any liability under criminal and civil fraud statutes, including 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729, or any other liability to which the participant may be subject.

8 NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE CONTRACT

CCC agrees that if any changes of any terms and conditions of this contract, including changes necessary to reconcile the technical practices listed on the CCC-1200 to those specified in the conservation plan, become necessary prior to the date that this contract is approved on behalf of CCC, CCC will notify the persons signing the CCC-1200 of such change and such person will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from the contract request. The participant agrees to notify the CCC of an intention to withdraw from the contract request within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.

9 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in the contract.

10 TERMINATION OF CONTRACT

If a participant fails to carry out the terms and conditions of this contract but CCC determines that such failure does not warrant termination of this contract, CCC may require such participant to refund, with interest, payments received under this contract, or require the participant to accept such adjustments in the subsequent payments as are determined to be appropriate by CCC.

11 CONTRACT MODIFICATIONS

CCC may modify this contract to add, or substitute certain practices when:

- A** (1) The installed practice failed to adequately treat a unit of land or water through no fault of the participants;
- (2) The installed practice would cause adverse impacts to significant cultural and environmental resources identified in the conservation plan, or those discovered as a result of installation;

(3) The installed measure has deteriorated because of conditions beyond the control of the participants; or

(4) Another practice will achieve at least the same level of environmental benefits.

B Additional conservation practices and/or land area is added to the contract provided the modification meets the identified resource concern and does not exceed any payments limitations.

C Both the participant and the State Conservationist or designee agree to this modification.

12 EFFECTIVE DATE AND CHANGES TO CONTRACT

A The EQIP contract is effective when signed by the participants and an authorized representative of CCC. Except as otherwise determined by CCC, the contract may not be revoked or revised unless by mutual agreement between the parties. Within the dates established by CCC, the contract must be signed by all required participants.

In the event that a statute is enacted during the period of this contract which would materially change the terms and conditions of this contract, the CCC may require the participants to elect between acceptance of modifications in this contract consistent with the provisions of such statute or termination of this contract.

B The EQIP contract shall be carried out in accordance with all Federal statutes and regulations, included but not limited to the National Environmental Policy Act, the Endangered Species Act, National Historic Preservation Act, Title VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, other nondiscrimination statutes, and the regulations of the Secretary of Agriculture found at 7 CFR Part 15, Subparts A & B. The CCC may, without incurring liability for breach of the contract, terminate the EQIP contract, in whole or in part, if CCC determines that continued operation of the contract will result in the violation of a Federal statute or regulation, or if CCC determines that termination would be in the public interest.

13 REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 1466 for the EQIP are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

By signing the EQIP contract, the participant certifies that he/she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while conducting any activity associated with the EQIP contract. This certification is a material representation of fact upon which reliance was placed when CCC determined to award this EQIP contract. If it is later determined that the participant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 7 CFR part 3017, Subpart F, Section 3017.600) CCC, in addition to any other remedies available to the United States, may take action authorized under the Drug-Free Workplace Act.

The following owners, operators, and producers by entering their signature acknowledge receipt of this Appendix to CCC-1200 and agree to the terms and conditions thereof. Further if the undersigned are succeeding to an existing EQIP contract, the undersigned agree and certify that no agreement exists or will be entered into between the undersigned, the previous owner and operator of the property, or mortgage holder that would, maintain or create an interest in the property in any previous participant on the EQIP contract for that property, or to receive payments under the contracts.

_____ Date _____

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