

CHAPTER 90

STATE SOIL CONSERVATION COMMITTEE

Authority

N.J.S.A. 4:24-3, 4:24-42 and 4:1C-24.

Source and Effective Date

R.1995 d.382, effective June 21, 1995.
See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Executive Order No. 66(1978) Expiration Date

Chapter 90, State Soil Conservation Committee, expires on June 21, 2000.

Chapter Historical Note

Subchapter 1, General Provisions, was filed and became effective January 1, 1976 as R.1975 d.360. See: 8 N.J.R. 3(b). Revisions became effective January 1, 1976 as R.1975 d.366. See: 8 N.J.R. 5(a). Further revisions became effective January 5, 1978 as R.1978 d.5. See: 9 N.J.R. 554(a), 10 N.J.R. 54(b). Further revisions became effective July 3, 1980 as R.1980 d.305. See: 12 N.J.R. 301(b), 12 N.J.R. 451(a). Subchapter 2, Soil and Water Conservation Project Cost Sharing: Eligible Projects, was originally adopted as R.1984 d.452, effective October 15, 1984. See: 16 N.J.R. 1416(a), 16 N.J.R. 2781(a). Subchapter 3, Soil and Water Conservation Project Cost Sharing: Procedural Rules, was originally adopted as R.1985 d.158, effective April, 1985. See: 17 N.J.R. 7(a), 17 N.J.R. 807(a). Subchapter 1 was readopted pursuant to Executive Order No. 66(1978) effective June 24, 1985. See: 17 N.J.R. 1160(a), 17 N.J.R. 1756(a). Chapter 90 was readopted as R.1990 d.356, effective June 22, 1990. See: 22 N.J.R. 1299(a), 22 N.J.R. 2142(a). Chapter 90 was readopted as R.1995, d.382, effective June 21, 1995. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

Cross References

Flood control, spoil material to be stabilized, see N.J.A.C. 7:13-2.7.

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SUBCHAPTER 1. GENERAL PROVISIONS

2:90-1.1 Purpose

These rules and regulations are to implement P.L.1975, chapter 251, N.J.S.A. 4:24-39 et seq., hereinafter referred to

as the act, to secure timely decisions by the soil conservation districts on application for development as defined therein, to assure adequate public notice of procedures thereunder and to continue effective administration of the law.

2:90-1.2 Definitions

All definitions in chapter 251, Laws of 1975, are incorporated in these regulations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Appeal” means a request for review of district function.

“Hearing body” means the State Soil Conservation Committee.

2:90-1.3 Standards for Soil Erosion and Sediment Control

(a) The State Soil Conservation Committee adopts and hereby incorporates into these rules by reference as standards for soil erosion and sediment control those standards published in the “Standards for Soil Erosion and Sediment Control in New Jersey” and identified as adopted or revised on April 12, 1999 as the technical basis for local soil conservation district certification of soil erosion and sediment control plans. Specifically, these standards include the following:

1. Vegetative Standards:

- Acid Soil Management 1-1
Adopted April 12, 1999
- Dune Stabilization 2-1
Revised April 12, 1999
- Maintaining Vegetation 3-1
Revised April 12, 1999
- Permanent Vegetative Cover for Soil Stabilization . 4-1
Revised April 12, 1999
- Stabilization with Mulch only 5-1
Revised April 12, 1999
- Stabilization with Sod 6-1
Revised April 12, 1999
- Temporary Vegetative Cover for Soil Stabilization . 7-1
Revised April 12, 1999
- Topsailing 8-1
Revised April 12, 1999
- Tree Protection During Construction 9-1
Revised April 12, 1999
- Trees, Shrubs and Vines 10-1
Revised April 12, 1999

2. Engineering Standards:

- Channel Stabilization 11-1
Revised April 12, 1999
- Conduit Outlet Protection 12-1
Revised April 12, 1999
- Detention Basin 13-1
Revised April 12, 1999
- Dewatering 14-1
Adopted April 12, 1999
- Diversions 15-1
Revised April 12, 1999

- Dust Control 16-1
Revised April 12, 1999
- Grade Stabilization Structure 17-1
Revised April 12, 1999
- Grassed Waterway 18-1
Revised April 12, 1999
- Land Grading 19-1
Revised April 12, 1999
- Lined Waterway 20-1
Revised April 12, 1999
- Offsite Stability Analysis 21-1
Adopted April 12, 1999
- Parking Lot Storage 22-1
Revised April 12, 1999
- Riprap 23-1
Revised April 12, 1999
- Rooftop Storage 24-1
Revised April 12, 1999
- Sediment Barrier 25-1
Revised April 12, 1999
- Sediment Basin 26-1
Revised April 12, 1999
- Slope Protection Structures 27-1
Revised April 12, 1999
- Soil Bioengineering 28-1
Adopted April 12, 1999
- Stabilized Construction Access 29-1
Revised April 12, 1999
- Storm Sewer Inlet Protection 30-1
Revised April 12, 1999
- Stream Crossing 31-1
Adopted April 12, 1999
- Subsurface Drainage 32-1
Revised April 12, 1999
- Traffic Control 33-1
Revised April 12, 1999
- Turbidity Barrier 34-1
Adopted April 12, 1999
- Underground Detention Storage 35-1
Revised April 12, 1999

3. Stormwater Runoff Treatment Standards:

- Dry Wells 36-1
Adopted April 12, 1999
- Extended Detention Basin 37-1
Adopted April 12, 1999
- Infiltration Structures 38-1
Adopted April 12, 1999
- On-Line Water Quality Storm Sewer Catch Basin . 39-1
Adopted April 12, 1999
- Sand Filters 40-1
Adopted April 12, 1999
- Vegetative Filter Strip 41-1
Adopted April 12, 1999
- Wet Ponds 42-1
Adopted April 12, 1999

4. Copies of the Standards may be obtained by contacting the State Soil Conservation Committee or any of the soil conservation districts as follows:

- i. Bergen County Soil Conservation District;
- ii. Burlington County Soil Conservation District;
- iii. Camden County Soil Conservation District;

2. The plan was certified subject to the attached conditions; or

3. The plan was denied certification with the reasons for the denial stated.

(e) The district shall include in the notice of certification or on the certified plan the following clause: "This certification is limited to the controls specified in this plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency."

(f) The district shall furnish the municipal planning board a copy of the certification or denial including all conditions and statements.

(g) The district shall grant or deny certification within 30 days from submission of a complete application. The district may be granted an additional 30 day review period through mutual written agreement with the applicant. Failure of the district to grant or deny certification within such period or such extension thereof shall constitute certification.

(h) The district shall require a new submission of the plan and application when a major revision is made.

(i) District certification of a soil erosion and sediment control plan for any project shall be valid only for the duration of the initial project approval granted by the municipality or other land use approval agency but in no case shall exceed three and one-half years. All such municipal or other agency renewals of the project will require resubmission of the project plan and recertification approval by the district.

Amended by R.1987 d.222, effective May 18, 1987.

See: 19 N.J.R. 395(a), 19 N.J.R. 861(a).

New (e) added; renumbered old (e)-(g) as (f)-(h).

Amended by R.1993 d.13, effective January 4, 1993.

See: 24 N.J.R. 3587(a), 25 N.J.R. 65(a).

Added new (i).

2:90-1.6 Appeal process

(a) The State Soil Conservation Committee may, on its own motion or at the request of any person aggrieved of any action by the district, review the decision of any soil conservation district and make whatever determinations it deems appropriate in the matter. Any person aggrieved of any decision of a soil conservation district shall have 10 days to appeal to the State Soil Conservation Committee which shall schedule a hearing and make a determination within 45 days of the petition for review. Any person against whom a stop-construction order is issued by any district shall also have the right to appeal to the State Soil Conservation Committee. Requests for appeal shall be addressed to:

Secretary, State Soil Conservation Committee
P.O. Box 1888
Trenton, New Jersey 08625

(b) The committee shall appoint and utilize the hearing office procedures of the Department of Agriculture for fact-finding and recommendations to the committee.

(c) The committee shall send a written notice to the appellant of hearing, stating:

1. The application number;
2. Details of how decision aggrieves appellant;
3. Date, time and place of hearing.

2:90-1.7 Municipal ordinances

(a) Municipalities may adopt soil erosion and sediment control ordinances conforming to the standards promulgated by the committee. Adoption by the municipality of such ordinances must be completed by May 31, 1978, in order to qualify for an exemption from sections 5 through 9 of the act.

(b) Such ordinances adopted by municipalities may provide for the review and certification of plans by the district in accordance with these rules and regulations. In all such cases, there shall be written contracts with the municipalities requesting review and certification and fees shall be charged in accordance with the established district fee schedule.

(c) Municipalities shall obtain the approval of such ordinances by the committee before being exempt from the provisions of this act. The committee may continue after May 31, 1978, to review municipal ordinances enacted before May 31, 1978, and, if it so determines, grant approval to such ordinances.

(d) The committee shall secure review and comment by the district on municipal ordinances submitted to it. The district may recommend approval or disapproval to the committee. Written notification of approval or disapproval shall be sent to the district and municipality by the committee within 60 days.

(e) Municipalities having a soil erosion and sediment control ordinance presently in effect who wish to be exempt from sections 5 through 9 of this act shall submit such ordinances to the committee for approval before May 31, 1978. Upon written notification of approval, which may be given after May 31, 1978, the municipality shall be exempt from sections 5 through 9 of this act.

(f) Districts shall annually review for compliance all soil erosion and sediment control ordinances enacted by municipalities within the district. The district shall inform the committee in writing of the results of this review by February 15 of each year. If at any time during the year the district determines and so notifies the committee that any

municipality is not enforcing its soil erosion and sediment control ordinance, the committee shall give written notice to the municipality that it is no longer exempt from sections 5 through 9 of the act.

(g) Any proposed change to a municipal ordinance which has received the approval of the committee, and is therefore exempt from sections 5 through 9 of the act, must be submitted to the committee for review and approval prior to enactment of the revised ordinance. For the municipality's exempt status to continue, all such changes must be found to be in accordance with the act and approved as such by the committee. Failure of the municipality to secure written notification of approval will result in discontinuance of municipal exemption from sections 5 through 9 of the act.

As amended, R.1978 d.5, eff. January 5, 1978.
See: 9 N.J.R. 554(a), 10 N.J.R. 54(b).

2:90-1.8 Fees

Reasonable fees shall be set by the soil conservation districts based on cost. The fee schedule proposed by each district shall be approved by the committee before it is adopted by the district. Any person aggrieved of the set fee may appeal to the State Soil Conservation Committee as outlined in section 6 of this subchapter.

2:90-1.9 Enforcement

(a) Inspection of projects to determine execution in accordance with the certified plan shall be carried out by the district in close coordination with the municipal engineer and building inspector.

(b) The district shall determine whether or not the provisions of the certified plan are being followed by the applicant.

(c) The district shall inform the applicant in writing of observed deviation from the certified plan and request immediate compliance with the plan.

(d) The district or the municipality may issue a stop-construction order if the applicant takes no action to comply with the provisions of the certified plan.

(e) When a stop-construction order is issued, no further construction activity may take place until the applicant is in compliance with all provisions of the certified plan.

(f) The municipality shall not issue a certificate of occupancy for a project unless there has been compliance with the provisions of the certified plan for permanent measures. The district shall provide the municipality with a report of compliance upon completion of the project.

Case Notes

Township manager is without authority either under the Soil Erosion and Sediment Control Act or this rule to issue a stop construction order for noncompliance with the certified plan; only the municipal

construction code enforcement official may issue such a stop order. J.P. Properties, Inc. v. Macy, 183 N.J.Super. 572 (Law Div.1982).

See: 19 N.J.R. 395(a), 19 N.J.R. 861(a).

2:90-1.10 Changes

Changes in the certified plan must be submitted to the district for reevaluation and approval.

2:90-1.11 Reports

The districts shall submit quarterly reports to the committee giving number of applications, number of certifications, denials and number of reviews.

2:90-1.12 Municipal ordinances for soil erosion and sedimentation control

(a) In order to protect the public interest and welfare and to enable the orderly continuance of municipal government in this State, the New Jersey State Soil Conservation Committee gave temporary approval to all municipal ordinances for soil erosion and sediment control adopted before January 1, 1976.

(b) Such temporary approval will be terminated on May 31, 1978.

R.1975 d.366, eff. January 1, 1976.

See: 8 N.J.R. 5(a).

As amended, R.1978 d.5, eff. January 5, 1978.

See: 9 N.J.R. 554(a), 10 N.J.R. 54(b).

2:90-1.13 Mining and quarrying activities

Certification of a soil erosion and sediment control plan shall be required for the operation of all mining or quarrying activities regardless of proposed or actual related agricultural or horticultural use. Mining or quarrying activities shall include the extraction and removal of soils and/or sediment, as defined in N.J.S.A. 4:24-41, from the proposed site.

New Rule R.1987 d.222, effective May 18, 1987.

See: 19 N.J.R. 395(a), 19 N.J.R. 861(a).

2:90-1.14 Minor subdivision

An application for minor subdivision, where the subdivider certifies in writing that no land disturbance is proposed, shall not be deemed a project for the purposes of the Soil Erosion and Sediment Control Act of 1975, as amended, N.J.S.A. 4:24-39 et seq. Municipal approval of subsequent applications for construction permits on lots derived from such subdivisions shall be conditioned upon district certification of a plan for soil erosion and sediment control where more than 5,000 square feet of the surface area of land will be disturbed by the applicant for the concurrent construction of two or more single family dwelling units or other structures. Concurrent construction, with respect to this policy, means any activity where land is disturbed in two or more lots at the same time by the same applicant in the same subdivision.

New Rule R.1987 d.222, effective May 18, 1987.

SUBCHAPTER 2. SOIL AND WATER CONSERVATION PROJECT COST SHARING: ELIGIBLE PROJECTS

2:90-2.1 Applicability

The projects contained in this subchapter are applicable to participants in a farmland preservation program pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 all rules and regulations promulgated thereunder.

2:90-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“District” or “soil conservation district” (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24 et seq.

“Farmland Preservation Program” means any voluntary “Farmland Preservation Program” or “municipally approved farmland preservation program,” the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the “Farmland Preservation Bond Act of 1981,” P.L. 1981, c.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and the maintenance and support of increased agricultural production as the first priority use of the land.

“Natural Resources Conservation Service” (NRCS) means Natural Resources Conservation Service of the United States Department of Agriculture.

“New Jersey Bureau of Forest Management” means the Bureau of Forest Management, Division of Parks and Forestry of the New Jersey Department of Environmental Protection.

“Soil and Water Conservation Project” means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity. Definitions of individual projects are contained in United States Department of Agriculture, Natural Resources Conservation Service Standards and Specifications, Technical Guide Section 4, and are incorporated herein by reference.

“Soil and Water Conservation Practice” means any individual component of a Soil Conservation Project identified on the Farm Conservation Plan. A group of practices when combined to resolve land treatment and related conservation problems are referred to as a “system.”

“Soil and water conservation project” means any project designated for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity. Definitions of individual projects are contained in United States Department of Agriculture, Natural Resources Conservation Service standards and specifications, Technical Guide Section 4, which are hereby adopted by reference. All forest management type practices shall be in accordance with standards and specifications adopted by New Jersey Bureau of Forest Management. Where determined necessary, the State Soil Conservation Committee may develop and adopt additional standards and specifications for installation of projects. Copies of Standards and Specifications are on file and may be viewed at United States Department of Agriculture Natural Resources Conservation Service, Soil Conservation District, and New Jersey Department of Agriculture offices.

“State Agriculture Development Committee” (SADC) means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

“State Soil Conservation Committee” (SSCC) means an agency of the State established pursuant to N.J.S.A. 4:24-1 et seq.

“Standards and specifications” means the United States Department of Agriculture Soil Conservation Service standards and specifications, Technical Guide Section 4, which are hereby adopted by reference. All forest management type practices shall be in accordance with standards and specifications adopted by New Jersey Bureau of Forest Management. Where determined necessary, the State Soil Conservation Committee may develop and adopt additional standards and specifications for installation of projects. Copies of Standards and Specifications are on file and may be viewed at United States Department of Agriculture—Soil Conservation Service, Soil Conservation District, and New Jersey Department of Agriculture offices.

“System” means a group of practices which when combined provide for the resolution of land treatment and related conservation problem(s).

“Technical agency” means the United States Department of Agriculture Natural Resources Conservation Service or the New Jersey Bureau of Forest Management having responsibility for standards and specifications as identified above for soil and water conservation projects approved by the State Soil Conservation Committee.

Amended by R.1995 d.382, effective July 17, 1995.
See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

2:90-3.3 Eligibility

Any landowner enrolled in a Farmland Preservation Program is eligible to apply for State funding assistance for soil and water conservation projects approved by the State Soil Conservation Committee and promulgated in N.J.A.C. 2:90-2.A. A farm operator may act as agent for the landowner when so designated in writing by the landowner. Upon the concurrence of the SCD, the landowner may request SCD review and recommendation for State funding assistance prior to formal enrollment in a Farmland Preservation Program provided he has expressed his desire in writing to enroll in such a program and has verified that his land is eligible to be enrolled in such a program as prescribed by the CADB.

2:90-3.4 Application procedure

(a) An applicant shall apply to the appropriate SCD for up to 50 percent of the cost of installing a soil and water conservation project(s) on the application form as defined. N.J.A.C. 2:90-3.2.

(b) The SCD shall advise the applicant of program provisions and policies and may assist the applicant in providing the appropriate information to complete the application.

(c) The SCD may establish priorities for providing technical assistance for the plan.

(d) A copy of the completed application shall be sent to the CADB for its information.

2:90-3.5 Feasibility review and technical agency referral

(a) The SCD shall seek the assistance of appropriate technical agencies or agents to determine the applicability of the requested projects to the land.

(b) The technical agency shall review the application and recommend projects that are essential and applicable to the landowners' proposed operation. If the technical agency determines that the requested projects are not feasible and upon the SCD concurrence, the applicant shall be so advised by the district.

2:90-3.6 Preparation of conservation plan

(a) If the technical agency determines that the requested projects are feasible, it shall prepare a farm conservation plan in consultation with the landowner. The plan shall indicate the proposed projects, their location, schedule for installation, maintenance requirements; and estimated costs.

(b) Upon completion of the plan and application, the technical agency shall submit same to the SCD for review and approval. The landowner shall be advised by the SCD of action taken on the plan.

(c) The plan may be modified at the landowners request subject to technical agency concurrence and SCD approval. If the applicant determines that the requested projects cannot be completed within the original schedule because of circumstances beyond his control, the applicant may request an extension of time. The request, including reasons why the extension is needed, shall be submitted, in writing, to the SCD. Upon its concurrence, the SCD shall forward such request to the SSCC for implementation. In no case shall extensions be granted for more than 12 months.

(d) If the SCD determines that serious soil and water management problems exist on the applicants' land, it may require that such problems be addressed prior to the initiation of other projects which are not directly related to the observed soil and water management problems. In addition, projects which are dependent upon prior installation of protective practices identified in the plan must be installed in accordance with the plan schedule.

Amended by R.1985 d.302, effective June 17, 1985.
See: 17 N.J.R. 861(b), 17 N.J.R. 1543(a).

Added (d).

Amended by R.1986 d.190, effective May 19, 1986.
See: 18 N.J.R. 449(a), 18 N.J.R. 1099(a).

(c) substantially amended.

2:90-3.7 Coordination with other cost share programs

(a) The SCD shall forward the plan and application to CFSA or other Federal agencies administering cost share programs to determine availability of funds for the project(s) in the approved plan.

(b) If the CFSA or other Federal agencies cannot share in the cost of projects, they shall return the plan and application to the SCD with appropriate documentation.

(c) Where Federal or other cost-sharing is available, the SCD shall coordinate the appropriate integration of projects.

(d) If the project(s) in the approved plan can be entirely or partially cost-shared with ACP funds, the SCD shall secure CFSA coordination of potential joint State-ACP cost sharing and the completion of appropriate portions of the application form.

(e) The SCD shall advise the applicant of funding available via other programs and recommended appropriate division of projects in the approved plan to assure maximum utilization of all other funding sources. Applicants will be required to seek maximum ACP and other Federal program funding on all projects. Where conservation systems or projects are separated into individual components, such components may be separately allocated to the respective funding sources. In any jointly cost-shared project or component, (f) and (g) below, shall be strictly adhered to.

(f) No Federal cost share program may be used as the landowner's matching portion of costs for a project(s) or any component of a project(s) funded under the provisions of this program.

(g) No portion of the State cost share program may be used as the landowner's portion of costs for a project(s) or any component of a project funded under the provisions of any Federal cost share program.

Amended by R.1995 d.382, effective July 17, 1995.
See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

2:90-3.8 District approval process

(a) Following review by the technical agencies and coordination with other cost share programs, the SCD shall review the application for program conformance.

(b) Upon verification that all eligibility criteria and other program provisions have been satisfied, the SCD shall approve or conditionally approve the application.

(c) The SCD shall promptly advise the applicant of its determinations in writing.

(d) For projects where the applicant provides at least 50 percent of the project cost without county funding assistance, the approved application shall be forwarded by the SCD to the State Soil Conservation Committee for approval. The SCD shall send a copy of the approved application to the CADB for its information.

(e) For projects where the applicant receives financial assistance from County appropriated funds for the cost of projects, the SCD shall forward the approved application to the CADB for concurrence. Following its approval, the CADB shall forward the application to the SSCC for approval.

2:90-3.9 State review and approval process

(a) The SSCC shall review and verify that the application is in conformance with program guidelines.

(b) Following verification, the SSCC shall approve the application and recommend SADC approval and obligation of funds for the entire amount of the approved plan. The SSCC may delegate this authority to the appropriate staff.

(c) Following SADC approval the SSCC and the SCD shall be advised of project funding approval.

(d) The SCD shall advise the applicant and appropriate technical agencies of application approval.

(e) Work must commence within 12 months of funding approval or the application may be cancelled unless the landowner submits a request for extension to the SCD providing reasons for such extension. Upon concurrence, the SCD shall forward the request to the SSCC for approval and implementation. In no case shall such extensions be granted for more than nine additional months.

(b) The SSCC, in consultation with the State technical committee or local work group, shall determine the conservation practices eligible for program payments for the priority area or for significant Statewide natural resource concerns outside a priority area.

(c) Where new technologies or conservation practices that provide a high potential for maximizing the environmental benefits per dollar expended have been developed, the SSCC in consultation with NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy and effectiveness of the technology conservation practices at maximizing environmental benefits per dollars expended. The SSCC in consultation with NRCS may involve other entities in the pilot testing, including conservation districts, extension and research agencies and institutions, private agribusiness sector, and others.

2:90-4.8 Technical and other assistance provided by qualified personnel not affiliated with USDA

(a) The NRCS State conservationist and the SCD may utilize technical and other assistance from qualified personnel of other Federal, State, and local agencies, and will encourage producers to use the most cost-effective technical assistance available, including if appropriate, using the services of the private agribusiness sector to carry out the assigned responsibilities of the program.

(b) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS may provide technical coordination for the program, in cooperation with the SCD regardless of who provides technical and other assistance and may assure that the quality of the assistance obtained from other Federal, State and local agencies and the private agribusiness sector is acceptable. Non-NRCS assistance shall not be deemed to satisfy a CCSP contract entered into under this program until the assistance has been approved by NRCS.

2:90-4.9 Application for contracts and selecting offers from producers

(a) Any producer who has eligible land may submit an application for participation in the CCSP to the SCD or a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) Applications will be accepted throughout the year. Offers of applicants shall be ranked periodically, as determined appropriate by NRCS and the SSCC after consultation with the State technical committee.

(c) The SSCC and the designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a priority area. Applications from the same priority area shall be prioritized using the criteria specific to the area. The SSCC with the assistance of the SCD, the designated conservationist and the FSA county executive director, shall approve for funding the applications in a priority area based on eligibility factors of the applicant and the NRCS ranking.

(d) The NRCS State conservationist, in consultation with the SSCC and the State technical committee, and using quality criteria in the NRCS field office technical guide, will develop criteria to prioritize applications from applicants with significant Statewide natural resource concerns outside a priority area. The SSCC, with assistance of the designated conservationist, and the SCD shall approve for funding these applications based on the eligibility factors of the applicant and the NRCS ranking.

(e) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. A participant has the option of offering and accepting less than the maximum program payments allowed.

(f) The SSCC shall utilize NRCS ranking of all applications. NRCS criteria considers:

1. The environmental benefits per dollar expended;
2. A reasonable estimate of the cost of the conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications will present the least cost to the program;
3. The environmental benefits that will be derived by applying the conservation practices in the conservation plan which will meet the purposes of the program;
4. The extent to which the contract will assist the applicant in complying with Federal, State or local environmental laws; and
5. Whether the land in the application is located in a priority area and the extent to which the contract will assist the priority area goals and objectives.

(g) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

2:90-4.10 Contract requirements

(a) In order for a participant to receive cost-share or incentive payments, the participant shall enter into a contract agreeing to implement a conservation plan or portions thereof. SSCC in coordination with FSA and SCD shall determine the eligibility of participants. The SSCC shall use the NRCS ranking and grant final approval of a contract.

(b) A CCSP contract shall:

1. Incorporate by reference all portions of the conservation plan to be funded through CCSP;
2. Be for a duration of not less than five years nor more than 10 years;
3. Incorporate all provisions as required by law or statute, including participant requirements to:
 - i. Not conduct any practices on the farm unit of concern that would tend to defeat the purposes of the contract;
 - ii. Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract consistent with N.J.A.C. 2:90-4.14;
 - iii. Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract in accordance with N.J.A.C. 2:90-4.13; and
 - iv. Supply information as required by SSCC to determine compliance with the contract and requirements of the program;
4. Specify the participant's requirements for operation and maintenance of the applied conservation practices.

(c) The participant shall apply a financially assisted practice within the first 12 months of signing a contract.

(d) There is a limit of one CCSP contract at any one time for each tract of agricultural land, as identified with a FSA tract number, determined at the time of the application for CCSP assistance. Subject to the payment limitation in N.J.A.C. 2:90-4.12, a participant may have subsequent CCSP contracts for different natural resource needs or concerns following completion of a previous CCSP contract on the same tract.

2:90-4.11 Conservation practice operation and maintenance

The contract shall incorporate the operation and maintenance of conservation practices applied under the contract. The participant shall operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by the SSCC. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS and the SCD may periodically inspect the conservation practice during the life span of the practice as specified in the contract to ensure that operation and maintenance is occurring.

2:90-4.12 Cost-share and incentive payments

(a) The maximum direct State share of cost-share payments to a participant shall not be more than 75 percent of the projected cost of a structural or vegetative practice. The direct State share of cost-share payments to a participant shall be reduced proportionately below 75 percent, or the cost-share limit as set in (a)2 below, to the extent that total financial contributions for a structural or vegetative practice from all public and private entity sources exceed 100 percent of the projected cost of the practice. The total of all public funding shall not exceed 90 percent of the projected costs of a practice and the direct State share shall be reduced proportionately to assure same.

1. SSCC shall provide incentive payments to participants for a land management practice in an amount and at a rate necessary to encourage a participant to perform the land management practice that would not otherwise be initiated without government assistance. Such payment shall not be more than 75 percent of the cost of performing a land management practice for the full term of the contract.

2. SSCC shall set the cost-share and incentive payment limits for CCSP as set forth in (a) and (a)1 above. The SSCC shall consider recommendations of:

i. The designated conservationist, in consultation with the SCD, the local work group and the State technical committee for a priority area; or

ii. The NRCS State conservationist, in consultation with the State technical committee, for participants subject to environmental requirements or with significant Statewide natural resource concerns outside a funded priority area.

3. Cost-share payments and incentive payments may both be included in a contract.

4. Cost-share and incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) Except as provided in (c) below, the total amount of State cost-share and incentive payments paid to a person under this part may not exceed:

1. \$10,000 for any fiscal year; and
2. \$50,000 for any multi-year contract.

(c) To determine eligibility for payments, SSCC shall use the provisions in 7 C.F.R. Part 1400 related to the definition of person and the limitation of payments, incorporated herein by reference, except that:

1. States, political subdivisions, and entities thereof will not be persons eligible for payment;

2. For purposes of applying the payment limitations provided for in this section, the provisions in 7 C.F.R. Part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

3. The SSCC in consultation with NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of \$10,000 in any fiscal year, up to the \$50,000 limitation in (b) above. However, such increase in payments for a certain year shall be offset by reductions in the payments in subsequent years. A decision to approve payments in excess of the annual limit will consider whether:

i. The practices in the system need to be applied at once so that the system is fully functioning to resolve the natural resource problem;

ii. The natural resource problem is so severe that resolving the problem immediately is needed;

iii. The producer needs to complete the practices in one year so that the farming operation is not interrupted or disturbed by the practice installation over a five to 10 year period; or

iv. The producer can install the practices at a lower total cost when installed in one year, thereby reducing the program payments;

4. With respect to land under CCSP contract which is inherited in the second or subsequent years of the contract, the \$10,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to a CCSP contract on other lands prior to the inheritance, to exceed the annual limit;

5. Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment; and

6. The status of an individual or entity on the date of application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(d) The participant, and the SCD and NRCS, must certify that a conservation practice is completed in accordance with the contract before the SSCC will approve the payment of any cost-share or incentive payments.

2:90-4.13 Contract modifications and transfers of land

(a) The participant and SSCC may modify a contract if the participant and SSCC agree to the contract modification and the conservation plan is revised in accordance with NRCS requirements and is approved by the conservation district.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by SSCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) SSCC may require a participant to refund all or a portion of any assistance earned under CCSP if the participant sells or loses control of the land under a CCSP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

2:90-4.14 Contract violations and termination

(a) If SSCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, the SSCC shall give the participant a reasonable time, as determined by the SCD, in consultation with NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, SSCC may, in consultation with the SCD and NRCS, terminate the CCSP contract.

1. Notwithstanding the provisions of (a) above, a contract termination shall be effective immediately upon a determination by the SSCC and SCD, in consultation with NRCS, that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of N.J.A.C. 2:90-4.18 or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b) If SSCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest. The SSCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, are not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

1. If SSCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The SSCC, will have the option to waive the liquidated damages depending upon the circumstances of the case.

2. When making all contract termination decisions, SSCC may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or

the hardships beyond the participant's control that have prevented compliance with the contract.

3. The participant may voluntarily terminate a contract if SSCC agrees based on SSCC's determination that termination is in the public interest.

4. In carrying out its role under this section, SSCC shall consult with the local conservation district.

5. In the event a participant fails to comply with any of the terms of the contract and the Department incurs legal or other expenses for the collection of repayments due or the enforcement or performance of any of the participant's obligations under the contract or this subchapter, the participant shall pay these expenses on demand by the Department. The Department shall not be required to mitigate any damages to the participant resulting from the participant's non-compliance with the terms of the participant's non-compliance with the terms of the contract or these regulations.

2:90-4.15 Appeals

(a) A participant may request a hearing on any adverse decision under CCSP within 20 days from the receipt of such determination, as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, telephone number of a contract person familiar with the matter;

ii. A copy of the determination objected to; and

iii. A concise statement listing the material facts in dispute and describing the basis of the participant's objection.

2. The SSCC shall, within 30 days of receipt of a properly completed request for a hearing, determine whether a hearing will be provided, and will notify the participant in writing of this determination.

(b) Nothing in this section shall be construed to provide a right to a hearing.

(c) The following decisions are not appealable:

1. Payment rates, payment limits, and cost-share percentages;

2. The designation of State-approved priority areas, conservation or significant Statewide natural resource concerns;

3. Eligible conservation practices; and

4. Other matters of general applicability as set forth in N.J.A.C. 2:90-4.1.

2:90-4.16 Compliance with regulatory measures

Participants who carry out conservation practices shall be responsible for obtaining the authorizations, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

2:90-4.17 Access to operating unit

Any authorized SSCC or SCD representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The SSCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

2:90-4.18 Misrepresentation and scheme or device

(a) A producer who is determined to have erroneously represented a fact affecting a program determination made in accordance with this subchapter shall not be entitled to contract payments and must refund to SSCC any such payments, plus interest determined in accordance with EQIP rules. The producer's interest in all contracts shall be terminated.

(b) A producer who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program or made fraudulent misrepresentation shall refund to SSCC any contract payment, plus interest determined in accordance with EQIP rules. The producer's interest in all contracts shall be terminated.