

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.2000 d.237, effective May 11, 2000.
See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 90, State Soil Conservation Committee, expires on November 7, 2005. See: 37 N.J.R. 2313(a).

Chapter Historical Note

Subchapter 1, General Provisions, was adopted as R.1975 d.360, effective January 1, 1976. See: 8 N.J.R. 3(b).

Subchapter 2, Soil and Water Conservation Project Cost Sharing: Eligible Projects, was 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 adopted as R.1985 d.158, effective April, 1985. See: 17 N.J.R. 7(a), 17 N.J.R. 807(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1, General Provisions, was readopted as R.1995 d. 370, effective June 24, 1985. See: 17 N.J.R. 1160(a), 17 N.J.R. 1756(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.1990 d.356, effective June 22, 1990. See: 22 N.J.R. 1299(a), 22 N.J.R. 2142(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.1995, d.382, effective June 21, 1995. See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Subchapter 4, Agricultural Conservation Cost Share Program, was adopted as R.1999 d.56, effective February 16, 1999. See: 30 N.J.R. 4096(a), 31 N.J.R. 527(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.2000 d.237, effective May 11, 2000. See: Source and Effective Date. See, also, section annotations.

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
- Topsoiling 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;

- iv. Cape-Atlantic Soil Conservation District (Cape May and Atlantic Counties);
- v. Cumberland County Soil Conservation District;
- vi. Freehold Soil Conservation District (Middlesex and Monmouth Counties);
- vii. Gloucester County Soil Conservation District;
- viii. Hudson, Essex and Passaic Soil Conservation District (Hudson, Essex and Passaic Counties);
- ix. Hunterdon County Soil Conservation District;
- x. Mercer County Soil Conservation District;
- xi. Morris County Soil Conservation District;
- xii. Ocean County Soil Conservation District;
- xiii. Salem County Soil Conservation District;
- xiv. Somerset-Union Soil Conservation District (Somerset and Union Counties);
- xv. Sussex County Soil Conservation District;
- xvi. Warren County Soil Conservation District;

(b) Where it can be satisfactorily demonstrated by the applicant that unique or innovative control measures or procedures not specified in this chapter may be applicable to specific sites, such measures may be proposed for consideration and utilized subject to approval by the soil conservation district and the State Soil Conservation Committee. To secure such approval, a written request shall be sent to the soil conservation district and State Soil Conservation Committee describing the unique or innovative control measure or procedure and its proposed function or use on the project. Such approval may be granted only where it is determined that strict application of the standards as herein specified will not result in the most practical and effective control of soil erosion, sedimentation and stormwater damages.

(c) The location, address, and telephone number of the local soil conservation district may be obtained from the State Soil Conservation Committee, PO Box 330, Trenton, New Jersey 08625-0330, 609-292-5540.

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

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

As amended, R.1980 d. 305, eff. July 3, 1980.

See: 12 N.J.R. 301(b), 12 N.J.R. 451(a).

Amended by R.1987 d. 171, effective April 6, 1987.

See: 18 N.J.R. 2081(a), 19 N.J.R. 513(a).

Completely revised vegetation standards.

Amended by R.1999 d.205, effective July 6, 1999 (operative October 1, 1999).

See: 30 N.J.R. 2106(a), 31 N.J.R. 1799(a).

Rewrote (a); and in (b), inserted a new second sentence.

2:90-1.4 Application

(a) Application for soil erosion and sediment control plan certification shall be made to the local district utilizing

standard application forms adopted by the Committee. Such application shall indicate the information required to make a decision on certification of plans. Application forms are available at locations listed at N.J.A.C. 2:90-1.3.

(b) Applications for certification of soil erosion and sediment control plans shall include the following items:

1. One copy of the complete subdivision, site plan or construction permit application, including key map as submitted to the municipality (architectural drawings, plans and specifications for buildings not required) which includes the following:

i. The location of present and proposed drains and culverts with their discharge capacities and velocities and supporting computations and identification of conditions below outlets;

ii. A delineation of any area subject to flooding from the 100-year storm in compliance with the Flood Plains Act, N.J.S.A. 58:16A or applicable municipal zoning;

iii. A delineation of streams, wetlands pursuant to N.J.S.A. 13:9B and other significant natural features within the project area;

iv. The soils and other natural resource information used (delineation of the project site on soil map is desirable);

v. The land cover and use of area adjacent to the land disturbance; and

vi. All hydraulic and hydrologic data describing existing and proposed watershed conditions and a completed copy of the Hydraulic and Hydrologic Data Base Summary Form SSCC 251 HDF1. Where HEC 1 and HEC 2—U.S. Army Corps of Engineers or TR20 and WSP2—USDA Natural Resources Conservation Service computer programs are used for modeling watershed hydrology and hydraulics, a copy of electronic input files shall be included. The Data Base Summary Forms and information regarding these computer programs are available at the locations listed at N.J.A.C. 2:90-1.3 above.

2. Four copies of the soil erosion and sediment control plan at the same scale as the site plan submitted to the municipality or other land use approval agency which includes the following information detailed on the plat:

i. The proposed sequence of development including duration of each phase in the sequence;

ii. A site grading plan delineating land areas to be disturbed including proposed cut and fill areas together with existing and proposed profiles of these areas;

iii. Contours at a two foot interval, showing present and proposed ground elevation;

iv. The locations of all streams and existing and proposed drains and culverts;

v. A stability analysis of all channels below all points of stormwater discharge which demonstrates that a stable condition will exist or there will be no degradation of the existing condition;

vi. The location and detail of all proposed erosion and sediment control structures including profiles, cross sections, appropriate notes, and supporting computations;

vii. The location and detail of all proposed non-structural methods of soil stabilization including types and rates of lime, fertilizer, seed, and mulch to be applied;

viii. Erosion control measures for non-growing season stabilization of exposed areas where the establishment of vegetation is planned as the final control measure;

ix. For residential development, erosion control measures which apply to dwelling construction on individual lots with notation on the final plat that requirement for installation of such control measures shall apply to subsequent owners if title is conveyed; and

x. Plans for maintenance of permanent soil erosion and sediment control measures and facilities during and after construction, which include the designation of persons or entity responsible for such maintenance;

3. Appropriate fees as adopted by the individual district and approved by the Committee (see N.J.A.C. 2:90-1.8); and

4. Additional information as may be required by the district depending upon the scope, topography and complexity of the project.

(c) The applicant shall certify and agree that the applicant shall:

1. Certify that all soil erosion and sediment control measures are designed in accordance with current Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the Committee and found at N.J.A.C. 2:90-1.3 and will be installed in accordance with the plan as approved by the district;

2. Acknowledge that structural measures contained in the soil erosion and sediment control plan are reviewed for adequacy to reduce offsite soil erosion and sedimentation and not for adequacy of structural design;

3. Retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the soil erosion and sediment control plan;

4. Require that all engineering related items of the soil erosion and sediment control plan be prepared by or under the direction of and be sealed by a professional engineer or architect licensed in the State of New Jersey in accordance with N.J.A.C. 13:27-6;

5. Assure that any conveyance of the project or portion thereof is conditioned upon transfer of full responsibility for compliance with the certified plan to any subsequent owners;

6. Maintain a copy of the certified plan on the project site during construction;

7. Allow district agents to go upon project lands for inspection; and

8. Notify the district in writing at least 48 hours in advance of any land disturbance activity and upon completion of the project.

(d) If the person submitting the application is not the project owner, a notarized authorization by the owner or authorized corporate officer must be submitted with the application. For public agency projects, such authorization shall be made by the principal executive officer or elected official of the agency.

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

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

Revised (a); added new (b)-(d).

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

2:90-1.5 Procedure

(a) The district shall carry out the provisions of sections 5 through 7 of the act.

(b) No project shall be undertaken by any person, partnership, or corporation, or other private or public agency unless the applicant has submitted to the district with local jurisdiction a plan for soil erosion and sediment control for such project, and the plan has been certified by the district as conforming to the standards promulgated by the New Jersey State Soil Conservation Committee. The plan shall provide for the control of soil erosion and sedimentation and utilize the standards for soil erosion and sediment control adopted by the New Jersey State Soil Conservation Committee.

(c) Approval by a municipal officer or agency for an application for development for any project shall be conditioned upon certification by the district for a plan for soil erosion and sediment control.

(d) The district shall review all soil erosion and sediment control plans submitted with a complete application and provide the applicant with a written notice indicating that:

1. The plan was certified;

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 by a decision of the 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
PO Box 330
Trenton, New Jersey 08625-0330

(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.

Amended by R.2000 d.237, effective June 5, 2000.
See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

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.

Amended by R.2005 d.39, effective January 18, 2005.
See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).
Deleted (f).

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).

2:90-1.10 Reports of Compliance

(a) A District having certified a soil erosion and sediment control plan for a project pursuant to N.J.S.A. 4:24-39 et seq. shall issue a written Final Report of Compliance in accordance with this section, upon the District determination that the project is in full and complete compliance with the requirements and provisions of the certified plan such that all permanent measures to control soil erosion and sedimentation are in effect for the entire project.

(b) A Report of Compliance (ROC) shall be issued when the District determines that a project or portion thereof is in full compliance with the certified plan and the Standards for Soil Erosion and Sediment Control in New Jersey (see N.J.A.C. 2:90-1.3), and that the permanent measures to control soil erosion and sedimentation are in effect for the area encompassed by the ROC.

(c) A Report of Compliance with Conditions (CRC) shall be issued when the District determines that the project or portion thereof is not yet in full compliance with the certified plan but is in satisfactory compliance to the extent practicable and in accord with the sequence of development and requirements thereof, such that the issuance of a temporary and conditional approval is appropriate with such conditions as may be imposed by the District. Satisfactory compliance means temporary measures and appropriate permanent measures for soil erosion and sediment control have been implemented according to the Standards including provisions for stabilization, site work and that no other site specific concerns exists.

(d) Upon written request from the applicant, the District may issue a ROC or CRC on a lot-by-lot or section-by-section basis for a project when lots or sections are a part of the project.

(e) A standard Report of Compliance form approved by the State Soil Conservation Committee shall be utilized by the District and shall allow for the District's issuance of a ROC or CRC. The District shall complete the standard Report of Compliance form in accordance with the requirements set forth in (e)1 through 4 below.

1. The District shall identify on the standard Report of Compliance form the block and lot, street address (if known), municipal location, the District application number and the date of issuance of the ROC.

2. The District shall state on the standard Report of Compliance form that the project or applicable portion thereof is in compliance with permanent measures to the extent determined by the district.

3. In order for the District's issuance of a ROC to be valid and effective, the standard Report of Compliance form shall be signed by an authorized District official, the District chairman or a designee, and specify its effective date.

4. In order for the District's issuance of a CRC to be valid and effective, the District shall comply with the requirements set forth in (e)1 through 3 above, and shall state in the standard Report of Compliance form all conditions that are to be satisfied to assure compliance with the requirements of the certified plan, as well as the date for completion of such conditions.

(f) Copies of the ROC or CRC shall be distributed by the District to the applicant; the municipal construction code official having construction code jurisdiction for the project, if applicable; and/or in the case where a construction permit is not required for a project (such as for mining and land clearing projects among others), the municipal official having jurisdiction over such project, if any.

1. The district may also issue a copy of a ROC or CRC, to such other persons or entities, as the district deems necessary or appropriate in its discretion. This includes, without limitation, any county, state and Federal agency, or instrumentality thereof, exercising any jurisdiction over the project.

2. In the case where a municipality authorized under N.J.S.A. 4:24-48 is the issuing agent, a copy of all ROCs and CRCs shall be submitted to the local District.

(g) No certificate of occupancy (CO) for a building or structure on a project, or any portion thereof, shall be issued by a municipality or any other public agency unless there has been a ROC issued by the District indicating compliance with the provisions of the certified plan for measures to control soil erosion and sedimentation. The District shall provide the municipality or other public agency with a ROC in accordance with (f) above.

(h) No temporary certificate of occupancy (TCO) for a building or structure on a project, or any portion thereof, shall be issued by a municipality or any other public agency unless a CRC or ROC is issued by the District. The District shall provide the municipality or other public agency with a copy of the CRC or final ROC.

(i) During the non-growing season, as defined in the Standards for Soil Erosion and Sediment Control in New Jersey (the Standards), or where seasonal or weather related constraints exist, or where the applicant's scheduling has prevented or delayed final stabilization (for example, completed site work during winter), the District may issue a CRC or ROC in accordance with *(i)1 through 3 below.

1. Where the applicant has completed temporary stabilization and provided temporary erosion control measures in compliance with the certified soil erosion and sediment control plan, the applicant may request a CRC or ROC from the District. The District may also require the applicant to provide a performance deposit and enter into a performance agreement with the District to assure completion of final stabilization. In such instance, the District may issue the CRC or ROC subject to the

requirement that final stabilization be completed by the date indicated on the performance agreement such as, by the end of the next growing season, as defined in the Standards or such reasonable time period established by the District.

2. Upon receipt of the signed performance agreement and cash performance deposit, the District shall deposit the performance deposit into an interest bearing escrow account with interest to accrue to the benefit of the applicant. The applicant shall sign and deliver to the District, any and all forms required by the District or its bank to open and maintain such interest bearing escrow account.

3. Upon completion of final stabilization by the applicant, the District shall return such performance deposit with interest to the applicant minus the administrative costs assessed by the District pursuant to (i)6 below.

4. Upon the failure of the applicant to timely or satisfactorily implement the permanent stabilization in accordance with performance agreement and this section, the District shall provide written notification of such failure to the applicant together with a demand that such failure be fully cured within 10 calendar days of the date of such notification to the District's satisfaction or a later date established by the District.

If after such 10 calendar day period, or agreed-to time frame, such failure is not fully and properly cured to the District's satisfaction the District may utilize the applicant's performance deposit in order to contract for all work necessary or required to cure such failure and to complete all permanent measures in accordance with the performance agreement.

5. The District's rights and remedies pursuant to this subsection are in addition to all of its other rights and remedies under the law including N.J.S.A. 4:24-39 et seq.

6. The District may charge a fee in connection with the processing and administration of the performance agreement and performance deposit, which shall be listed in the District fee schedule, approved by the Committee.

(j) Any exempt municipality authorized by the Committee pursuant to N.J.S.A. 4:24-48, and implementing an approved ordinance thereunder shall implement these provisions.

New Rule, R.2005 d.39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.10, Changes, recodified to N.J.A.C. 2:90-1.11.

2:90-1.11 Changes

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

Recodified from N.J.A.C. 2:90-1.10 by R.2005 d.39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.11, Reports, recodified to N.J.A.C. 2:90-1.12.

2:90-1.12 Reports

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

Recodified from N.J.A.C. 2:90-1.11 by R.2005 d. 39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.12, Municipal ordinances for soil erosion and sedimentation control, recodified to N.J.A.C. 2:90-1.13.

2:90-1.13 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).

Recodified from N.J.A.C. 2:90-1.12 by R.2005 d. 39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.13, Mining and quarrying activities, recodified to N.J.A.C. 2:90-1.14.

2:90-1.14 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).

Recodified from N.J.A.C. 2:90-1.13 by R.2005 d. 39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.14, Minor subdivision, recodified to N.J.A.C. 2:90-1.15.

2:90-1.15 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.

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

New Rule, R.2005 d.39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

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.

“State Soil Conservation Committee” (SSCC) means an agency of the State established pursuant to Chapter 24 of Title 4 of the Revised statutes.

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

2:90-2.3 Standards and specifications

All soil and water conservation projects contained within this subchapter shall be in conformance with the United States Department of Agriculture Natural Resources Conservation Services Standards and Specifications, Technical Guide Section 4, which is 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 practices.

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

2:90-2.4 Eligible projects

The soil and water conservation projects contained in this subchapter are approved for cost-sharing in a farmland preservation program.

2:90-2.5 Terrace systems

(a) Terrace systems which reduce pollution of water, land, or air from agricultural non-point sources may be applied to cropland subject to erosion from water runoff.

(b) The following types of practices are approved for terrace systems:

1. Terraces and the necessary leveling and filling to permit installation of an effective system.
2. Materials and installation of underground pipe outlets and other mechanical outlets.
3. Necessary vegetative protective outlets or waterways.
4. Converting the present system to a new system ONLY if the present system is not serving its intended conservation purpose.
5. Removing portions of stone walls or hedgerows if necessary to permit establishment of the practice.

(c) A protective outlet or waterway which is installed solely as an outlet for the terrace system and serves no other conservation purpose should be cost-shared as a component of this practice. A protective outlet or waterway which by itself solves a conservation problem, but also serves as an

outlet for a terrace system, should be cost-shared under Sod Waterways or Sediment Retention, Erosion, or Water Control Structures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installment.

2:90-2.6 Diversions

(a) Diversions which conserve water, prevent erosion, and prevent or reduce pollution of water, land, or air from agricultural non-point sources may be applied to farmland subject to erosion from excess surface or subsurface water runoff where the problem can be corrected by such diversion facilities.

(b) The following types of practices are approved for diversion systems:

1. Diversions, ditches, dikes, or subsurface drains where necessary for proper functioning of diversion.
2. Installation of structures such as pipes, chutes, underground outlets, or other outlets, if needed for proper functioning of a ditch or dike for more even flow, or to protect outlets from erosion.
3. Necessary leveling and filling to permit installation of an effective system.
4. Removing portions of stone walls or hedgerows if necessary to permit establishment of the practice.

(c) The following special conditions are applicable to diversion systems:

1. Cost-sharing is not authorized for ditches or dikes designed to impound water for later use, or which will be a part of a regular irrigation system. (Refer to other practices that permit such measures.)
2. A protective outlet or waterway which is installed solely as an outlet for diversion systems and serves no other purpose should be cost-shared as a component of this practice. A protective outlet or waterway which by itself solves a conservation problem, but also serves as an outlet for a diversion system, should be cost-shared under Sod Waterways or Sediment Retention, Erosion, or Water Control Structures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.7 Contour farming

(a) A contour farming system which will protect soil from wind or water erosion and abate pollution of water, land, or air from agricultural non-point sources may be applied to non-terraced cropland subject to wind or water erosion which constitutes a pollution hazard.

(b) The following types of practices are approved for contour farming:

1. Cost-sharing is limited to the establishment of a contour farming system and the necessary removal of obstacles such as fences, stone walls, or hedgerows where applicable.

2. Cost-sharing is authorized for subsurface drains needed to eliminate spot seepage on five percent or greater slopes where the seepage makes cross-slope tillage impractical. Subsurface drains may be the sole component if spot seepage develops and makes cross-slope tillage impractical in existing contour farming.

(c) The following special conditions are applicable to contour farming:

1. All agricultural operations must be performed as nearly as practicable on the contour.

2. On acreage devoted to row crops, one of the following must apply:

i. The crop stubble or crop residue must be left standing over the winter;

ii. A winter cover crop must be established;

iii. Adequate protective tillage operations must be performed.

3. This practice is not applicable on any acreage that is approved under stripcropping.

4. Cost-sharing is not authorized for repeating any approved measure under this practice with the same person on the same acreage.

(d) The acreage approved in the established system or an approximate equal acreage shall be maintained for a minimum of eight years after year of establishment.

2:90-2.8 Stripcropping systems

(a) Contour stripcropping systems which protect soil from wind or water erosion and reduce pollution of water, land, or air from agricultural non-point sources may be applied to cropland subject to erosion or soil movement.

(b) The following types of practices are approved for stripcropping systems.

1. Cost-sharing is limited to the establishment of the systems and, if necessary, the removal of such obstacles as fences, stone walls, or hedgerows where applicable.

2. Cost-sharing is authorized for subsurface drains needed to eliminate spot seepage on five percent or greater slopes where the seepage makes cross-slope tillage impractical. Subsurface drains may be the sole component if spot seepage develops and makes cross-slope tillage impractical in existing stripcropping systems.

(c) The following special conditions are applicable to stripcropping systems:

1. On acreage devoted to row crops, one of the following must apply:

i. The crop stubble or residue must be left on the land during the winter;

ii. A winter cover crop must be established;

iii. Adequate protective tillage operations must be performed.

2. For contour stripcropping systems, cultural operations must be performed as nearly as practicable on the contour.

3. Cost-sharing is not authorized for repeating any approved measure under this practice with the same person on the same acreage.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.9 Sod waterways

(a) Sod waterways which reduce erosion of land and the pollution of water from agricultural non-point sources may be applied to farmland needing permanent sod waterways to safely convey excess surface runoff water.

(b) The following types of practices are approved for sod waterways:

1. Cost-sharing is authorized for site preparation, grading, shaping, filling, and establishing permanent vegetative cover.

2. Cost-sharing is authorized for subsurface drains and stone lining that are necessary for proper functioning of the waterway.

(c) The following special conditions are applicable to sod waterways:

1. The cover may consist of sod-forming grasses, legumes, mixtures of grasses and legumes, or other types of vegetative cover that will provide the needed protection from erosion.

2. Close-sown small grains or annuals may be used for temporary protection followed by eligible permanent vegetative cover established by seeding.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.10 Windbreak restoration or establishment

(a) Windbreak restoration or establishment systems which restore or establish windbreaks for protecting eligible farmland from soil erosion and for reducing the pollution of water, air, or land may be applied to farmland needing protection against serious wind erosion.

3. Planting area must be protected from destructive fire and destructive grazing.

4. Chemicals used in performing this practice must be Federally and State registered and must be applied strictly according to authorized uses, directions on label, and other Federal or State policies and requirements.

5. Consideration must be given to preserving and improving the environment.

(d) This practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.23 Animal waste control facilities

(a) Animal waste control facilities which reduce the existing pollution of water, land, or air by animal wastes may be applied to areas on farmland where animal wastes from the farm constitute a significant pollution hazard. This practice is designed to provide facilities for storage and handling of livestock and poultry waste and the control of surface runoff water to permit the recycling of animal waste onto the land in such a manner as to abate pollution which would otherwise result from livestock or poultry operations.

(b) The following types of practices are approved for animal waste control facilities:

1. For animal waste storage facilities such as aerobic or anaerobic lagoons, liquid manure tanks, holding ponds, collection basins, settling basins, composting facilities and similar facilities as well as diversions, channels, waterways, outlet structures, piping, land shaping, and similar measures needed as part of a system on the farm to manage animal waste.

2. Permanently installed equipment needed as an integral part of the system; for fencing and vegetative cover (including mulching needed to protect the facility); and for leveling and filling to permit the installation of an effective system.

(c) The following special conditions are applicable to animal waste control facilities:

1. Cost-sharing is limited to solving the pollution problems where the livestock or poultry operation is part of a total farming operation, and shall be limited to the most cost-effective facilities.

2. Cost-sharing is authorized only if the storage and diversion facilities will contribute significantly to maintaining or improving the soil or water quality.

3. Cost-sharing is not authorized for the following:

i. Measures primarily for the prevention or abatement of air pollution unless the measures also have soil and water conserving benefits;

ii. Portable pumps, pumping equipment or other portable equipment, buildings or modifications of buildings or for spreading animal wastes on the land;

iii. For that portion of animal waste structures installed under or attached to buildings which serve as part of the building or its foundation;

iv. For animal waste facilities that do not meet local or State regulations.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.24 Agrichemical handling facility

(a) The storage, handling, and mixing of agrichemicals and the cleaning of application equipment can constitute a pollution hazard to surface and ground water. This practice is designed to provide an impervious containment area for isolation of spillage from on-farm agrichemical mixing, loading, unloading, and rinsing operations in order to minimize pollution of soil, water, air, plant, or animal resources.

(b) The following types of practices and components are approved for an agrichemical facility:

1. Land shaping, leveling, and filling to permit installing the system;

2. Formed concrete, reinforcing, sump, sealant, gravel for sub-base and access ramps;

3. Pumps, pipes, valves, and storage tanks permanently installed for use in the agrichemical facility;

4. Diversions, waterways, outlet structures, and similar measures to convey surface water away from the facility; and for fencing and vegetative cover including mulching;

5. Roof, including gutters and downspouts, and side-walls to exclude precipitation from the facility; and for providing water and electric services from proximate locations.

(c) Cost-sharing is not authorized for the following:

1. Offsite disposal of rinsate and spillage; nor for remedial action to correct soil, water, or other resources affected by agrichemical spillage.

2. Agrichemical facilities that do not meet local or State regulations.

3. Non permanent interior wall partitions and enclosures, including insulation, ventilation, shelving, etc., for the storage of agrichemicals.

(d) The agrichemical facility shall be operated and maintained for a minimum of eight years following the calendar year of installation.

New Rule R.1995 d.380, effective July 17, 1995.
See: 27 N.J.R. 1836(a), 27 N.J.R. 2686(a).

2:90-2.25 Cost share rates

(a) Projects as identified in N.J.A.C. 2:90-2.5 through 2.24 shall be cost shared at 50 percent of the actual cost, not to exceed 50 percent of a maximum amount per project as estimated by the district in consultation with the United States Department of Agriculture, Natural Resources Conservation Service District Conservationist and CFSA County Executive Director. Districts shall consult with authorized personnel within the New Jersey Bureau of Forest Management for forestry related practices.

(b) The maximum per project cost shall be based upon the average cost for installation of such practices in the district, as determined from actual CFSA and NRCS cost records for similar work under Federal cost share programs. For those practices which are not in the Federal programs, the district shall consult with USDA or Bureau of Forest Management officials in the district to investigate actual costs and establish a suitable average maximum cost reflecting current prices. An average cost schedule developed in accordance with this procedure shall be adopted by the district and filed with the State Soil Conservation Committee on or before January 15 of each year. The SSCC shall reserve the right to review maximum cost rates and to require adjustments if deemed necessary.

(c) The least cost practice or system which is determined to be effective and functional shall be the basis for cost-share rates. An applicant may install a more expensive practice or system if it is determined to be effective and conforms to the standards and specifications in N.J.A.C. 2:90-2.3, but shall be eligible for reimbursement only for up to 50 percent of the least cost option described above.

New Rule. R.1985 d.303, effective June 17, 1985.

See: 17 N.J.R. 86(a), 17 N.J.R. 1542(c).

Amended by R.1986 d.105, effective April 7, 1986.

See: 18 N.J.R. 131(a), 18 N.J.R. 638(a).

(c) added.

Recodified from 2:90-2.24 and amended by R.1995 d.380, effective July 17, 1995.

See: 27 N.J.R. 1836(a), 27 N.J.R. 2686(a).

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

SUBCHAPTER 3. SOIL AND WATER CONSERVATION PROJECT COST SHARING: PROCEDURAL RULES

2:90-3.1 Applicability

This subchapter contains State Soil Conservation Committee rules which describe procedures for soil conservation districts and other participating conservation agencies regarding the review and approval of applications for soil and water conservation projects pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., (P.L. 1983, C.32). These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and N.J.A.C. 2:76-5.

2:90-3.2 Definitions

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

“Agricultural Conservation Program” (ACP) means a Federal Cost Share Program administered by the Consolidated Farm Services Agency of the United States Department of Agriculture.

“Application form” means a standard form adopted by the State Soil Conservation Committee.

“Consolidated Farm Services Agency” (CFSA) means the Consolidated Farm Services Agency of the United States Department of Agriculture.

“County Agriculture Development Board” (CADB) means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

“District” or “Soil Conservation District” (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

“Farm conservation plan” or “plan” means a plan which indicates needed land treatment and related conservation and resource management measures including approved forest management practices that are determined practical and reasonable for a particular farm to conserve and protect natural resources and to maintain and enhance agricultural productivity.

“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 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 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 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.

Amended by R.2000 d.237, effective June 5, 2000.
See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).
Amended N.J.A.C. reference.

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) 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.

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

Amended by R.2000 d.237, effective June 5, 2000.
See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Deleted former (f) and (g) and added a new (f).

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.

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

Source and Effective Date

R.1999 d.56, effective February 16, 1999.
See: 30 N.J.R. 4096(a), 31 N.J.R. 527(a).

2:90-3.10 Project completion and payment

(a) Upon project or project component completion, the applicant shall notify the SCD and request payment.

(b) The SCD shall secure technical agency verification that the project(s) or project component(s) has been completed in accordance with technical standards and specifications and also verify applicants payment claims. If payment claims are satisfactory, the SCD shall forward the payment request with the payment claim voucher, itemized bills, and related documentation that substantiates all costs incurred to the SSSC.

(c) The SSSC shall verify that program provisions have been satisfied prior to recommending SADC payment to the applicant.

2:90-3.11 Maintenance

(a) The applicant shall be responsible for maintaining the project(s) for eight years following date of completion.

(b) The SCD shall be responsible for inspecting the project(s) for maintenance in accordance with guidelines provided by the SSSC. Such inspections shall be performed annually on at least five percent of each practice installed under the program within the SCD.

(c) The applicant shall allow SCD and other program agents reasonable access to the project site for the purpose of site inspections.

2:90-3.12 Violations

(a) If the SCD determines that an applicant fails to comply with the provisions for maintenance of the project, the SCD shall advise the landowner of required corrective measures. The SCD shall forward a copy of such notification to the SSSC.

(b) The landowner shall not be liable for inadequate maintenance or destruction of a project(s) if caused by a natural disaster that could not have been reasonably anticipated.

2:90-3.13 Records

The SCD shall retain application forms, plans, performance reports, and all other related information pertaining to the applicant and approved projects.

SUBCHAPTER 4. AGRICULTURAL CONSERVATION COST SHARE PROGRAM

Authority
N.J.S.A. 4:24-3.

2:90-4.1 Applicability

(a) Through the New Jersey Department of Agriculture (NJDA) Conservation Cost Share Program (CCSP), the State Soil Conservation Committee (SSCC) provides technical, educational, and financial assistance to eligible farmers to address soil, water, and related natural resources concerns, and to encourage environmental enhancements on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved through the implementation of structural, vegetative, and land management practices on eligible land.

(b) This program will be integrated with and will complement the USDA Environmental Quality Incentives Program (EQIP) administered jointly by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). These rules are closely aligned with EQIP rules, at 7 C.F.R. Part 1466, and establish responsibilities and clarify requirements related to program administration by the State Soil Conservation Committee and the New Jersey Department of Agriculture and the soil conservation districts. To the extent possible, these rules shall be interpreted to achieve maximum compatibility with EQIP. Responsibility and accountability for administration and expenditure of State funds appropriated to this program reside solely with the New Jersey Department of Agriculture, and are allocated to the State Soil Conservation Committee. Full coordination, cooperation and consultation with the 16 soil conservation districts, the NRCS and FSA is expected. Authority for final interpretation of these rules is retained by the SSSC, NJDA.

2:90-4.2 Administration

(a) CCSP is administered by SSSC in cooperation with the soil conservation districts, the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth in (b) and (c) below.

(b) SSSC shall, following consultation with the agencies listed in (a) above:

1. Provide overall program management and implementation leadership for CCSP;
2. Establish policies, procedures, priorities, and guidance for program implementation, including determination of priority areas;
3. Establish cost-share and incentive payment limits;
4. Determine eligibility of practices;
5. Provide technical leadership for conservation planning and implementation, quality assurance and evaluation of program performance;

6. Make funding decisions and determine allocations of program funds;

7. Be responsible for the administrative processes and procedures for applications, contracting and financial matters, including allocation and program accounting; and

8. Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes and administrative and financial performance reporting.

(c) The Soil Conservation Districts shall:

1. Advise producers within the District of the availability, terms and conditions of CCSP;

2. Receive applications and approve conservation plans from applicants;

3. Assist applicants in completing the application;

4. Coordinate with NRCS, FSA and SSCC in the review of applications;

5. Provide technical assistance to the applicant in the development and implementation of the approved conservation plan and with the installation of conservation practices included in the approved CCSP contract; and

6. Recommend SSCC approval of the CCSP application and contract.

2:90-4.3 Definitions

The following definitions shall apply to this subchapter and all documents issued in accordance with this subchapter, unless specified otherwise:

“Agricultural land” means cropland, pasture, forest land, and other land on which crops or livestock are produced.

“Animal unit” means 1,000 pounds of live weight of any given livestock species or any combination of livestock species.

“Animal waste management facility” means a structural practice used for the storage or treatment of animal waste.

“Applicant” means a producer who has requested in writing to participate in CCSP. Producers who are members of a joint operation shall be considered one applicant.

“Confined livestock operation” means a livestock facility that stables, confines, feeds or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth or postharvest residues within the confined area in the normal growing season over any portion of the confinement facility.

“Conservation management system” (CMS) means any combination of conservation practices and management practices that, if applied, will protect or improve the soil, water, or related natural resources. A CMS may treat one or all of the natural resources to sustainable level, or to a greater or lesser extent than the sustainable level.

“Conservation plan” means a record of a participant’s decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

“Conservation practice” means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications as a part of a CMS.

“Contract” means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

“Cooperator” means an individual, group of people, or representative of a unit of government who has entered into a working arrangement or cooperative agreement with a conservation district to work together in planning and carrying out resource use, development and conservation on a specific land area.

“Cost-share payment” means the monetary or financial assistance from SSCC to the participant to share the cost of installing a structural or vegetative practice.

“County executive director” means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

“Designated conservationist” means a NRCS employee whom the State conservationist has designated as responsible for administration of EQIP.

“District or Soil Conservation District” (SCD) means a governmental subdivision of this State organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

“Environmental Quality Incentives Program” (EQIP) means a USDA agricultural conservation cost share program jointly administered by NRCS and FSA and referred to as 7 C.F.R. Part 1466.

“Farm Service Agency” (FSA) means an agency of USDA jointly administering EQIP with NRCS.

“Farm Service Agency County Committee” means a committee elected by the agricultural producers in the county or area, in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, P.L. 74-46, as amended, or designee.

“Field Office Technical Guide” (FOTG) means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to New Jersey for which it is prepared and is hereby incorporated by reference.

“Incentive payment” means monetary or financial assistance from SSCC to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

“Land management practice” means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, animal waste management, integrated past management, integrated crop management, stream corridor management, irrigation water management, soil erosion and sediment control management practices.

“Life span” means the period of time specified in the contract or conservation plan during which the conservation management systems or component conservation practices are to be maintained and used for the intended purpose.

“Liquidated damages” means a sum of money stipulated in the contract which the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

“Livestock” means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State conservationist identifies in consultation with the State technical committee.

“Livestock production” means farm and ranch operations involving the production, growing, raising, breeding, and reproduction of livestock or livestock product.

“Livestock-related natural resource concern” means any environmental condition, either on-site or off-site, that is directly related to livestock activity or to livestock manure or waste.

“Local work group” means representatives of FSA, Rutgers Cooperative Extension (RCE), the soil conservation district, other Federal, State, and local government agencies, including producers, Resource Conservation and Development Councils, and others with expertise in natural re-

sources who consult with NRCS and SSCC on decisions related to EQIP and CCSP implementation.

“Natural Resources Conservation Service” (NRCS) means an agency of USDA responsible for administration of Federal conservation assistance programs and jointly administering EQIP with FSA.

“Operation and maintenance” means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

“Participant” means an applicant who is a party to a CCSP contract.

“Priority area” means a watershed, area, or region that is designated under this part because of specific environmental sensitivities or significant soil, water, or related natural resource concerns.

“Private agribusiness sector” means agricultural producers, certified crop advisors, professional crop consultants that are certified or certified and independent, agricultural cooperatives, integrated pest management coordinators and scouts, agricultural input retail dealers, and other technical consultants.

“Producer” means a person who is engaged in livestock or agricultural production.

“Related natural resources” means those natural resources that are associated with soil and water, including air, plants, and animals, and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

“Resource management system” means a conservation management system that, when implemented, achieves sustainable use of the soil, water, and related natural resources.

“State conservationist” means the NRCS employee authorized to direct and supervise NRCS activities in New Jersey.

“State executive director” means the FSA employee authorized to direct and supervise FSA activities in New Jersey.

“State Soil Conservation Committee” (SSCC) means an agency of the State established in accordance with N.J.S.A. 4:24-3 chaired by the New Jersey Secretary of Agriculture. The Chairman of the Committee may act on behalf of the Committee.

“State technical committee” means the committee established in New Jersey to provide guidance and recommendations for the implementation of EQIP in accordance with EQIP rules.

“Structural practice” means a conservation practice which primarily involves the establishment, construction, or installation of a site-specific measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, agrichemical handling facility, terraces, grassed waterways, tailwater pits, and livestock water developments.

“Technical assistance” means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provision of quality assurance for professional conservationists; and evaluation and assessment of the program.

“Unit of concern” means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

“Vegetative practice” means a conservation practice which primarily involves the establishment or planting of a site-specific vegetative measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, contour grass strips, filterstrips, critical area plantings, tree planting, and permanent wildlife habitat.

2:90-4.4 Program requirements

(a) Program participation is voluntary. The participant, in cooperation with the local conservation district, develops a conservation plan for the farm unit of concern. The participant’s conservation plan serves as the basis for the CCSP contract. SSCC provides cost-share or incentive payments to apply needed conservation practices and land use adjustments within a time schedule specified by the conservation plan.

(b) The SSCC determines the funds available for technical assistance according to the purpose and projected cost for which the technical assistance is provided. The SSCC allocates an amount according to the type of expertise required, the quantity of time involved, the timeliness required, the technology needed, and other factors as determined appropriate.

(c) To be eligible to participate in CCSP, an applicant must:

1. Be in compliance with the highly erodible land and wetland-conservation provisions administered by USDA;
2. Have control of the land for the life of the proposed contract period.

i. If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide SSCC with the written concurrence of the landowner in order to apply a structural or vegetative practice;

3. Submit a conservation plan that is acceptable to SSCC and NRCS, is approved by the conservation district, and is in compliance with the terms and conditions of the program as set forth in this subchapter; and

4. Supply information as required under this subchapter to determine eligibility for the program.

(d) Land used as cropland, pasture, forest land, and other land on which crops or livestock are produced, including agricultural land that SSCC and NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types; terrain; climate; soil, topographic, flood, or saline characteristics; or other factors or natural hazards, including the existing agricultural management practices of the applicant, may be eligible for enrollment in CCSP. Additionally, land may only be considered for enrollment in CCSP if SCD and the NRCS determine that the land is:

1. Privately owned land; or
2. Publicly owned land where:

i. The land is under private control for the contract period and is included in the participant’s operating unit;

ii. Conservation practices will contribute to an improvement in the identified natural resource concern; and

iii. The participant has provided written authorization from the government landowner to apply the conservation practices.

2:90-4.5 Priority areas and significant Statewide natural resource concerns

(a) Consistent with maximizing the overall environmental benefits per dollar expended by the program, SSCC may:

1. Designate a watershed, an area, or a region of special environmental sensitivity or having significant soil, related natural resource concern as a priority area and give special consideration to applicants who have conservation plans that address the natural resource concern(s) for which the priority area was designated;

2. Identify significant Statewide natural resource concerns outside a priority area.

(b) In addition to other factors identified in this section, priority areas and significant Statewide natural resource concerns shall emphasize off-site benefits to the environment and coordination with other conservation programs.

(c) SSCC may approve technical, educational and financial assistance under this subchapter to participants with significant Statewide natural resource concerns outside a priority area.

(d) To be considered for approval of a priority area, Federal, State, or local government agencies, private groups or entities shall work cooperatively with a respective local work group and State technical committee in identifying potential priority areas. The local work group shall obtain input from private individuals, groups, and organizations when considering and identifying potential priority areas. Proposals developed at the local level shall be reviewed by the State technical committee which makes a recommendation to the SSCC in coordination with the NRCS State conservationist. The priority area proposal shall include:

1. A description, quantified when and where possible, of the nature and extent of natural resource concerns in the proposed area;
2. A description, quantified when and where possible, of how the proposed goals, objectives, and solutions for the natural resource problems would maximize the environmental benefits that would be delivered with the requested State dollars, both within the priority area and as part of the overall program provided under this part;
3. Background information such as science-based data on environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns in the priority area or the appropriateness of the proposed solution to those natural resource concerns;
4. The existing human resources, incentive programs, education programs, and on-farm research programs available at the Federal, State, and local levels, both public and private, to assist with the areawide activities;
5. The technical, educational, and financial assistance needed from CCSP to help meet the areawide goals and objectives;
6. Ways and means to measure performance and success, quantified when and where possible, and plans to use existing or obtain additional science-based information; and
7. An explanation, quantified when and where possible, of the degree of difficulty producers face in complying with environmental laws.

(e) The SSCC in consultation with the NRCS State conservationist, and the State technical committee and based on recommendations of local work groups, will approve the designation of priority areas and make funding allocations. The SSCC in cooperation with NRCS will evaluate proposals for priority area designations according to natural resource and environmental factors as identified in (e)1 below, the economic significance of the factors, the incorporation

of conservation practices that best address the factors, and the ability to obtain multiple conservation benefits relative to the significance of these natural resource factors.

1. SSCC in consultation with NRCS shall consider the following factors in determining the significance of the natural resource concern(s) identified in the proposal:

- i. Soil types and characteristics;
- ii. Terrain and topographic features;
- iii. Climatic conditions;
- iv. Flood hazards;
- v. Saline characteristics of land or water;
- vi. The environmental sensitivity of the land, such as wetlands and riparian areas;
- vii. The quality and intended use of the land;
- viii. The quality and intended use of the receiving waters, including fishery habitat and source of drinking water supply;
- ix. Wildlife and wildlife habitat quality and quantity;
- x. Quality of the air; and
- xi. Other natural hazards or other factors, including the existing agricultural management practices of the producers in the area or pest problems which may threaten natural resources.

2. SSCC will consider the following factors in its allocation of funds:

- i. The condition of the natural resources;
- ii. The significance of the natural resource concern;
- iii. Improvements that will result from implementation of the conservation plan;
- iv. The expected number of producers who will participate and the time and financial commitment that the producers will provide;
- v. The estimated program cost to provide technical, educational, and financial assistance;
- vi. The level of coordination with and support from existing Federal, State, and local programs, including private sources, and both direct and in-kind contributions;
- vii. The ways the program can best assist producers in complying with Federal and State environmental laws, quantified where possible; and
- viii. Other factors the SSCC determines will result in maximization of environmental benefits per dollar expended.

(f) SSCC in consultation with the State technical committee and based on recommendations of a local work group,

may approve program assistance to participants with significant Statewide natural resource concerns outside a funded priority area.

2:90-4.6 Conservation plan

(a) The participant shall develop and submit a conservation plan for the farm unit of concern that, when implemented, protects the soil, water, or related natural resources in a manner that meets the purpose of the program, is acceptable to SSCC and the NRCS, and is approved by the conservation district. This plan forms the basis for a CCSP contract.

1. When considering the acceptability of the plan, the SCD and the NRCS will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended.

2. As determined by the SCD and the NRCS, the conservation plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the NRCS New Jersey Field Office Technical Guide which is incorporated herein by reference, as amended and supplemented, for the priority natural resource condition of concern in priority area or the significant Statewide natural resource concern outside a funded priority area. The FOTG is available for review at the USDA-Natural Resources Conservation Service at 1370 Hamilton Street, Somerset, NJ 08873.

(b) Upon a participant's request, the SCD and the NRCS may provide technical assistance to a participant. The SCD and the NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies or private agribusiness sector or organizations, in performing its responsibilities for technical assistance. Participants may use the services of qualified professionals to provide technical assistance, NRCS and the SCD shall have approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CCSP contract compliance.

(c) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this subchapter.

(d) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the NRCS New Jersey field office technical guide.

(e) The conservation plan, or supporting documentation, for the farm unit of concern shall include:

1. A description of the prevailing farm enterprises and operations that may be relevant to conserving and enhancing soil, water, or related natural resources;

2. A description of relevant natural resources, including soil types and characteristics and conditions, proximity to water bodies, wildlife habitat or other relevant characteristics related to the conservation and environmental objectives of the plan;

3. A description of the participant's specific conservation and environmental objectives to be achieved;

4. To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

5. A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

6. A description of the schedule for implementing the conservation practices, including timing and sequence; and

7. Information that will enable evaluation of the effectiveness of the plan in achieving the conservation and environmental objectives.

(f) To simplify the conservation planning process for the participant, the conservation plan may be developed, at the request of the participant, as a single plan that incorporates, to the extent possible, any or all other Federal, State or local government program or regulatory requirements. Participants do not need to replace existing plans developed by natural resource professionals if such plans meet the resource management objectives under this part. NRCS and the SCD may accept an existing conservation plan developed and required for participation in any other program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CCSP contract. It is the responsibility of the participant to ascertain and comply with any and all applicable program or regulatory requirements, and the NRCS or SCD development or approval of a conservation plan shall not be deemed to constitute compliance with program or regulatory requirements administered or enforced by another agency.

2:90-4.7 Conservation practices

(a) The SSCC, with SCD, NRCS and FSA consultation, shall provide guidance for determining structural, vegetative and land management practices eligible for program payments. To be considered as an eligible conservation practice, the practice must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve soil, water, or related natural resources to provide for environmental enhancement.

(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) Based upon the integration of CCSP with EQIP as described in N.J.A.C. 2:90-4.1(b), cost share and incentive payments paid to a person shall be based upon the combined total of CCSP and EQIP financial assistance funds as allocated by NJDA/SSCC and USDA/NRCS respectively for any fiscal year. State cost share and incentive payments paid to a person under this section shall be a percentage of the total of the combined CCSP and EQIP payments approved for that person which exactly reflects the percentage of CCSP financial assistance funds allocated to the combined total CCSP and EQIP funds allocated in any fiscal year. Except as provided in (c) below, total cost share and incentive payments from CCSP and EQIP to any person from the combined total of CCSP and EQIP financial assistance funds for any fiscal year shall not exceed \$100,000 for any multi-year contract or \$30,000 for any fiscal year. The total amount of State cost share and incentive payments paid to a person may not exceed the above described percentage of combined financial assistance funds for any multi-year contract or for any fiscal year.

(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 \$20,000 in any fiscal year, up to the State maximum approval portion of the combined CCSP and EQIP \$100,000 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 \$20,000 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.

Amended by R.2000 d.237, effective June 5, 2000.

See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Rewrote (b).

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 misrepresenta-

tion 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.