DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

RIN 0578–AA19

Environmental Quality Incentives Program

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a final rule for the Environmental Quality Incentives Program (EQIP). CCC published a proposed rule for EQIP in the **Federal Register** on October 11, 1996 (61 FR 53574) and solicited comments from the public. This final rule establishes the process by which CCC will administer EQIP, responds to comments received from the public during the 45-day comment period, and incorporates clarifications to improve implementation of the program.

EFFECTIVE DATE: May 22, 1997.

ADDRESSES: This final rule may be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.ftw.nrcs.usda.gov; select the 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890. Phone: 202–720–1845. Fax: 202–720–1838.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

Pursuant to Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final rule is an economically significant regulatory action because it may result in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 6029, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Regulatory Impact Analysis document prepared for this rule. The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity, maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The program was authorized at $1.3 billion over the seven-year period of FY 1996 through FY 2002, with annual amounts of $200 million per year after the initial interim year of $130 million. During the interim administration period in FY 1996 authorized by 16 U.S.C. 3839aa–8, the CCC used the $130 million to continue implementation of the terms and conditions of the superseded programs to the extent that such terms and conditions were consistent with the statutory provisions of EQIP.

In considering alternatives for implementing the program, NRCS followed the legislative intent to maximize environmental benefits per dollar expended, address natural resource problems and concerns, establish an open participatory process that emphasizes priority areas, and provide flexible assistance to producers who apply appropriate conservation measures while complying with Federal, State, and tribal environmental laws. The baseline alternative recognizes that the four former conservation programs—the Agricultural Conservation Program (ACP), Water Quality Incentives Program (WQIP), Great Plains Conservation Program (GPCP), and Colorado River Basin Salinity Control Program (CRSCP)—ceased to exist on April 4, 1996, with the passage of the authorized amendments in the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) to the Food Security Act of 1985 (the 1985 Act); an interim program extended until October 4, 1996. The baseline assumes that no new program would replace the former programs, resulting in a substantial decrease in funding for USDA conservation efforts. It is recognized that some conservation adoption by agricultural producers would continue in the absence of these programs (e.g., up to 20 percent of producers according to Cooper and Keim's assessment of WQIP). (Reference: Cooper, J.C., R.W. Keim. ''Incentive Payments to Encourage Farmer Adoption of Water Quality Protection Practices.'' American Journal of Agricultural Economics, Volume 78 (February 1996), pages 54–64.) The baseline alternative further recognizes that several other Federal conservation programs will be implemented which will generate environmental benefits. The Conservation Reserve Program (CRP), Wetland Reserve Program (WRP) and the recently established Wildlife Habitat Incentive Program (WHIP) will be implemented during the same time period as authorized for EQIP. The highly erodible land and wetland conservation compliance requirements will continue to be in effect.

Based on the economic analysis, assuming the level of funding authorized by the 1996 Act, an estimated 35.7 million acres of agricultural land would be treated over the seven years of the program, including 18.5 million acres of cropland, 3.7 million acres of pasture, and 13.5 million acres of rangeland. Of the total agricultural land treated, an estimated 26.8 million acres are expected to be in priority areas. In regards to livestock operations needing assistance with animal waste management facilities, NRCS estimates that over 10,000 small- to medium-sized livestock operations will be assisted with EQIP; 65 percent are expected to be in priority areas.

The off-farm public benefits associated with on-farm conservation efforts are directly dependent upon the on-farm treatment needs and associated benefits. In the case of non-point source pollution from agricultural sources, for instance, public benefits are not achieved until private landuser behavior changes and on-site conservation measures are applied. Some of the off-site benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and groundwater from agrochemical management, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat. EQIP encourages participants to adopt a comprehensive approach to solving natural resource and environmental concerns. The program is designed to take full advantage of the relationships among and between conservation practices and the natural resources they are designed to protect. Unlike CRP and WRP, EQIP provides for treatment of natural resource concerns while enabling the land to be used for the production of food and fiber. Furthermore, by replacing the four former conservation

programs, the single program will reduce the administrative costs for both farmers or ranchers and the Federal government.

In addition to the expected disbursements for cost-share and incentive payments, EQIP costs include staff costs for actual delivery of technical assistance for practice application and educational assistance to agricultural producers on appropriate conservation methods. Technical assistance costs will vary according to the type of expertise required, the complexity and scope of the natural resource concerns being addressed, and the objectives of the landowner. Technical assistance services are also needed to help producers install conservation practices that may be partially supported by EQIP, other Federal programs, and by State or local government, or private financial assistance programs. In terms of public and private investment, USDA experience indicates that private landuser costs per acre for conservation nearly equal Federal costs when analyzed on a consistent basis. Private landuser costs per year for conservation averaged about $10 per acre nationally, according to a 1995–96 evaluation NRCS conducted for its conservation technical assistance and watershed protection program activities.

Total discounted benefits on cropland for EQIP are estimated at $1651 million. This includes on-site production benefits of $544 million, other reduced input benefits (such as irrigation savings) of $181 million, and off-site benefits of $924 million. This compares to estimates of $504 million and $410 million for federal and private costs, respectively.

Total discounted benefits for pasture are estimated at $324 million. These benefits compare to Federal and private costs of $51 million and $63 million, respectively. Total discounted benefits for rangeland are estimated at $438 million, compared to Federal and private costs of $204 million and $83 million, respectively.

The total discounted present value of benefits for EQIP (excluding any benefits from conservation practices for treatment of animal waste) amount to $2.41 billion while the present value of total discounted costs, both public and private, are estimated at $1.65 billion. The net benefits (estimated benefits less all costs) amount to $759 million expressed in discounted present value dollars. Providing for an allowance for the accrual of treated acreage over time and adjusting to an annual basis (at a 3 percent interest rate), the annualized net benefits are estimated to be $76 million, of which 62%, or $47 million, are on-site benefits. Other studies have determined off-site benefits as approximately 2 to 3 times the amount of on-site benefits (Resources Conservation Act, USDA, 1989). Assuming the net off-site benefits are a medium level of 2.5 times that of on-site benefits, then net off-site benefits will be $118.3 million annually, for a total on-and off-site benefits of $165.6 million annually.

The overall benefit to cost ratio is estimated to be 1.46, even though off-site benefits for pasture and rangeland and total benefits for animal waste management were not estimated due to unavailability of data. The benefit to cost ratios for the major land types are: cropland, 1.81; pasture, 2.84; and rangeland, 1.52. Cropland treatment will produce the largest on-site and off-site benefits. The on-site benefit to private cost ratios for cropland, pasture, and range are 1.77, 5.12, and 5.25 respectively.

A copy of this analysis is available upon request from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

CCC has determined through an amendment to the ''Environment Assessment for the Environmental Quality Incentives Program, August 1, 1996'' that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment, the amendment, and the finding of no significant impact may be obtained from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0174.

Executive Order 12998

This final rule has been reviewed in accordance with Executive Order 12998. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

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

Pursuant to § 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, USDA classified this final rule as major and CCC conducted a risk assessment. Available upon request is an environmental risk assessment including a comparison of the relative risks managed by EQIP and other programs in the Department which address similar risks resulting from comparable activities. One year after the final rule is promulgated, the economic analysis based on a risk management assessment will address the costs associated with implementation and compliance of the regulation and qualitative and quantitative benefits of the regulation. A copy of the risk assessment is available upon request from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C., 20013–2890.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal government, or the private sector; therefore a statement under § 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to 5 U.S.C. § 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it has been determined by CCC that it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to offer the public timely, reliable information about funding for conservation practices as early before the start of the spring 1997 planting season as possible. Information about the availability of the program for establishing conservation practices may

influence planting decisions and should, therefore, be disseminated to producers before planting decisions are made. Failure to provide this information in a timely manner may mean that the realization of important conservation benefits available under EQIP may be delayed for another year before the start of another planting season. Further, since the four former conservation programs ceased to exist on April 4, 1996, and the temporary or interim authority to administer EQIP ended on October 4, 1996, there is no program in operation nationally that provides technical, financial, and educational assistance of this kind to producers for natural resource conservation purposes. Accordingly, this rule is effective upon publication in the **Federal Register**.

Discussion of Program

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) amended the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) to re-authorize the Environmental Conservation Acreage Reserve Program as the umbrella conservation program encompassing the Conservation Reserve Program (CRP) (16 U.S.C. 3831–3836), the Wetlands Reserve Program (WRP) (16 U.S.C. 3837 *et seq.*), and the newly created Environmental Quality Incentives Program (EQIP) (16 U.S.C. 3840). Under the Environmental Conservation Acreage Reserve Program, the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements, other Federal and State environmental laws, and to meet other conservation needs.

EQIP combines into one program the functions of several conservation programs administered by the Secretary of Agriculture, including the Agricultural Conservation Program (ACP), the Agricultural Water Quality Incentives Program, the Colorado River Salinity Control Program (CRSCP), and the Great Plains Conservation Program (GPCP), which are rescinded by the 1996 Act. Through EQIP, flexible technical, financial, and educational assistance is provided to farmers and ranchers who face serious threats to soil, water, and related natural resources on their land, including grazing lands, wetlands, forest land, and wildlife habitat. Participation in the program is voluntary. The assistance is provided in a manner that maximizes environmental benefits per dollar expended, helps producers comply with the eligibility provisions of the 1985 Act, and helps farmers and ranchers meet Federal and State environmental requirements. A consolidated and simplified conservation planning process will be used to reduce any administrative burdens that would otherwise be placed on producers.

The 1985 Act provides that funds of the CCC will be used to fund the assistance provided under EQIP. For fiscal year 1996, $130 million was made available to administer an interim program; a minimum of $200 million is to be made available for each of fiscal years 1997 through 2002. Fifty percent of the funding available for the program will be targeted at practices relating to livestock production.

The CCC is a government-owned and operated corporation, chartered in the 1930's to help stabilize and support farm prices and income, and to maintain balanced supplies and orderly distribution of agricultural commodities. The 1996 Act expanded the mission of the CCC to include the power to carry out conservation or environmental programs authorized by law.

The CCC is run by a Board of Directors, and the Secretary of Agriculture serves as the Chairman of the Board. The Administrator of Farm Service Agency (FSA) and the Chief of NRCS serve as officers of the corporation. The CCC does not have its own operating personnel, and all work done on behalf of the CCC is performed by personnel of agencies within USDA. Pursuant to CCC bylaws, the NRCS Chief and the FSA Administrator, as officers of the corporation, may use NRCS and FSA personnel, respectively, to conduct work for CCC.

EQIP is a CCC-funded program, as reflected by the placement of this regulation with other CCC program regulations and the designation of CCC throughout the regulation itself. On behalf of the CCC, the NRCS and FSA share administration of EQIP. Where appropriate, this final regulation describes the CCC responsibilities performed by personnel from the two respective agencies.

On October 11, 1996, CCC published a proposed rule with request for comments. The proposed rule described the program requirements, administrative processes, and eligibility criteria that CCC would use in implementation of EQIP. The proposed rule also described how priority areas and significant statewide natural resource concerns for program funding would be designated and what information would be considered in making those designations. Over 800 separate responses containing about 2500 specific comments were received during the 45-day comment period: 360 responses from farmers, ranchers, and other individuals, 121 from agricultural and rural community organizations, 49 from environmental organizations, 111 from conservation districts and related groups, 66 from business entities, and 109 from State and local agencies.

Additional responses were received from Federal agencies and employees; their comments are not included in the following analysis of public comments. These responses were treated as inter- and intra-agency comments and considered along with the public comments where appropriate.

All comments received are available for review in Room 6032–S, South Building, 14th and Independence Ave., S.W., Washington, D.C., during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, almost all respondents expressed appreciation for the opportunity to comment on the EQIP proposed rule. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule. Some of these suggestions were group efforts, where individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule.

The majority of comments centered on six major issues in the proposed rule: definition of large confined livestock operation; focusing the program in priority areas; local work groups; requirement for a conservation plan and long-term contract; roles of agencies; and delayed payments in the first fiscal year of a contract. Several comments either commended or criticized specific statutory requirements. These comments were considered as part of the rulemaking record to the extent that they were relevant to the provisions of the rulemaking. Numerous minor editorial and other changes in the text were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes were included in the final rule.

To implement the final rule, NRCS will, with concurrence from FSA, be responsible for establishing and documenting in program guidance the overall policies, priorities, procedures, and guidelines for EQIP. NRCS will seek the review and input by other Federal agencies, as appropriate, when developing the guidance document.

General Comments on 7 CFR Part 1466

Under the proposed rule, CCC would set out EQIP regulations in 7 CFR part 1466. The following summarizes general comments received on the proposed rule and CCC's response to them.

1. The 1996 Act

Support for the introduction of EQIP and the proposed method for implementing its provisions was expressed in 78 comments. An additional 29 comments express general disagreement with the introduction of a new program, its proposed method for implementation, and the elimination of programs such as the ACP that have been in existence for many years. *The Department recognizes that EQIP provides a new direction for natural resources conservation programs and, as such, may create concern among those familiar with former programs. However, Congress established EQIP to combine into a single program the functions of the former programs and to carry out the single program in a manner that maximizes environmental benefits per dollar expended, and the Department is required to administer the laws as passed by Congress.*

2. Preamble Language in the Proposed Rule

Nineteen comments concern the length of the public comment period. Twelve comments request an extension of the comment period by at least 30 to 45 days. Seven of the comments appreciate the opportunity given for input and the varied mediums by which comments would be accepted. *Over 800 responses were received from a range of interested parties from across the Nation. CCC believes that a sufficient length of time was provided and it has received sufficient input to proceed to a final rule.*

Five comments concern the benefit cost assessment conducted pursuant to Executive Order 12866. These comments suggest that most environmental benefits occur off-site, recognize the difficulty in quantifying off-site environmental benefits, and support Federal incentives for producers to adopt on-site practices. *The comments were considered along with other information and data to finalize the benefit cost assessment.*

The preamble to the proposed rule included a discussion of the efforts being made to improve program outreach to all eligible citizens and solicited suggestions regarding how program delivery can be improved on environmentally sensitive land managed by producers who have not participated historically in the Department's conservation programs. There were 25 comments received in response to this request. Five comments express general support for USDA outreach efforts. Nine comments express concern that EQIP will primarily benefit large agricultural operations to the detriment of smaller, family-run operations. One comment states that it appeared the midwestern farmers would benefit to a greater extent than those in the southeast and recommends the program provide equal benefits all over the country. Several other miscellaneous comments were received on outreach.

Seven comments made specific recommendations for increasing USDA's outreach efforts. These recommendations include: permit flexible schedules for applying practices and systems; offer low-cost conservation practice alternatives; consider the value of a producer's labor as the producer's share of the cost; utilize local cooperative extension service agencies in the education efforts; conduct a survey of producers who do not normally participate and ask them the reasons for their non-participation; provide flexibility regarding the control of land for American Indians and others; and, coordinate the various conservation programs such as CRP, WRP, and EQIP. Several comments suggest Amish and Old Order Mennonite producers, Tribes, and Pacific Islanders are groups that have not participated historically and USDA should encourage greater participation. *The Department remains dedicated to increasing program availability to all eligible citizens. The recommendations made in the public comments have been incorporated in the final rule where applicable or will be included in program guidance and delivery activities.*

Section-by-Section Comments on 7 CFR Part 1466

Section 1466.1 Applicability

The proposed rule indicated that farmers and ranchers could receive program assistance to address soil, water and related natural resources concerns. There were 44 comments expressing support for wildlife habitat concerns receiving program assistance on par with soil and water issues and many of these comments wanted the final rule to reflect the emphasis on wildlife issues to a greater extent. Three comments voice concern that a balance should be attempted among soil conservation, water quality, and other natural resource concerns; one commenter believes EQIP should not be targeted as an environmental program; and seven commenters identify particular natural resource concerns that EQIP should encompass. *EQIP shall be implemented in a balanced manner in accordance with the statutory purposes for which EQIP was established, including the statutory admonition to achieve environmental benefits in a cost-effective manner. The proposed rule contained broad language to facilitate the identification of a broad range of natural resource concerns at the local level and the Department still believes that this is the appropriate approach. Therefore, no change is made in this section's language related to natural resource concerns. The final rule now contains, however, a new definition for ''related natural resources'' to help clarify the broad range of natural resource concerns that are intended.*

Seven comments support cost-share assistance for the implementation of profitable practices. Several of these comments indicate that a practice may prove profitable for a producer to implement in the long term but the initial cost of installation may limit the extent of its adoption. These commenters suggest that EQIP should provide cost-share to off-set the initial outlay. Three commenters specifically indicate that cost-share assistance should not be provided for practices that are locally accepted as being sound and necessary components of a profitable agricultural operation. *EQIP assistance is not to assist producers in the performance of normal or routine farming operations, but to encourage the adoption of practices which address particular natural resource concerns. During program implementation, the Department will scrutinize the profitability of certain practices, ascertain whether such practices would likely be adopted absent program assistance, and direct program assistance accordingly. Even though EQIP assistance may not be available for a practice determined to be a ''profitable practice,'' other Federal, State, tribal, or local programs may provide credit or other types of assistance to producers for initial outlay costs. Producers can obtain information regarding other USDA program assistance from their local USDA service center.*

Five comments suggest the rule and the processes for implementation of EQIP should be simplified, but gave no further specific examples of how this could be accomplished. *The Department will evaluate on a continuing basis ways to improve program delivery, including making the application process simpler*

and removing unnecessary administrative steps for the participant.

Section 1466.2 Administration

In this section, the respective roles of the NRCS and FSA were identified, and provided for other agencies to assist NRCS and FSA with implementing EQIP. Five comments express approval of the roles outlined for the two agencies. Three comments express specific disapproval of NRCS and FSA sharing responsibility for program implementation and 3 comments believe that such an arrangement would prove cumbersome. Two comments express the importance that the agencies administer the program in a simple and coordinated manner. Four comments desire further clarification of the respective roles of the agencies. One comment notes that successful program implementation requires the agencies to train their personnel. *USDA believes that it is important for both NRCS and FSA to share in administrative responsibilities for the program and that the respective roles of each agency are satisfactorily identified. The proposed arrangement takes advantage of the proven expertise of both NRCS and FSA. USDA established the respective roles for NRCS and FSA and continues to find this shared responsibility for program implementation to be an effective utilization of Department resources. Training of NRCS, FSA, and cooperating agency employees will be conducted to ensure that employees can perform their jobs in a highly skilled, quality manner. Accordingly, no change has been made in the final rule concerning the shared responsibilities of NRCS and FSA.*

Fifteen comments concern NRCS leadership of the program. Ten of the comments support the NRCS State conservationist making local program and funding decisions. One comment supports NRCS making funding decisions and allocation determinations with FSA concurrence as proposed in the rule. Two comments urge that FSA should not be involved at all except for administrative purposes. Two comments state that FSA should not be involved in the program because of the different missions between NRCS and FSA.

There were 45 comments regarding the roles of FSA and FSA county committees in the program. Twenty-six comments favor the administration of the program should be fully carried out by FSA county committees. Nine comments state that the program should be fully carried out through the FSA. Eight comments suggest that FSA continue to perform their same duties as in the former ACP, with NRCS providing technical assistance only. Two comments state that FSA and FSA county committees should administer EQIP due to the cost-effectiveness of the CRP and the ACP.

The Department believes that the framework identified for delivery of the program utilizes the proven expertise of NRCS and FSA to the fullest extent possible. This framework identifies the primary role of NRCS to be the Department's primary agency for natural resource conservation on private lands. It also meets a basic intent of the Department to simplify delivery of programs and improve their flexibility and efficiency with both agencies playing a major role in their delivery. EQIP places a much stronger emphasis on long-term natural resource planning and assessment than was emphasized under ACP. The core elements of the program require a higher level of technical expertise on a broader scale than performed under previous conservation programs. NRCS has the technical capability to meet these strengthened technical assistance requirements and FSA can provide efficient administrative expertise to support the program. No change was made in the final rule concerning the roles of the agencies in the program.

Two comments make the suggestion that NRCS attempt to quantitatively evaluate each contract, within the context of its watershed, in order to fulfill its responsibility to evaluate program success. One comment notes that the benefits of the conservation practices may be much greater off-site and NRCS should consider such benefits when evaluating the success of a particular contract. *NRCS will evaluate the program's performance at the farm and ranch, priority area, State, regional, and national levels to: ensure that the program purposes are met; evaluate the net benefits of different conservation practices; and, understand ways to improve performance of the program. The program evaluation and assessment process will include, but not be limited to: determination of benchmark or baseline natural resource conditions; establishment of performance indicators; measurement of conservation effects and outcomes; determination of financial investment; and, compilation of program accomplishments. National program assessments will be done by aggregating assessments, data, and information from the farm/ranch, priority area, State, and regional levels.*

In regards to funding decisions in paragraph 1466.2(b)(6), 52 comments suggest that FSA county committees should have authority to make all funding and allocation determinations. Twelve comments support NRCS having authority to make funding and allocation decisions. One comment suggests that NRCS and FSA should share responsibility for making funding decisions and allocation determinations. One comment states that site-specific funding decisions and ranking producer applications are the sole responsibility of NRCS and FSA county committees must fund ranked plans. *The framework that the Secretary approved for delivery of the program provides for an adequate concurrence mechanism regarding funding and allocation determinations between NRCS and FSA. NRCS, as the lead agency, is in the best position to make initial funding recommendations and then work closely with FSA to obtain necessary concurrence. No change was made in the final rule regarding these comments.*

There were 31 comments on paragraph 1466.2(c) regarding the use of the local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act of 1936 in administering subtitle III conservation programs. The commenters suggest the Secretary should provide the FSA committees with the same authorities as under the former conservation programs. *The Department believes that the local, county, and State committees are being used in a manner that is consistent with section 8(b) of the Soil Conservation and Domestic Allotment Act of 1936. The committees have specified responsibilities on local work groups or State technical committees, and in administrative processes and procedures for applications, contracting, and financial matters. Additionally, USDA believes that the FSA county committee system will continue to serve a vital role by representing the resource concerns of their production agriculture constituents. FSA county committees have built a foundation of trust over the years with many farmers and ranchers throughout the Nation. As a full partner on the local work groups the FSA county committees will be able to gain the involvement of and acceptance by the farmers and ranchers whom they represent in the locally-led conservation effort. FSA county committees are an integral component of the local work group and their input and judgment is important to the effort. All members of the local work group will need to create working relationships with others so that the collaborative efforts of the group will result in a successful*

program. No change was made in the final rule concerning the roles of FSA county committees.

In reference to paragraph 1466.2(f), nineteen comments want the State FSA Committees to have approval authority for all applications and cooperative agreements with other entities. Eight comments support the proposed rule language that provides for cooperative agreements with other entities, believing that such arrangements could improve delivery of the program and address natural resource concerns in coordination with others. Four comments express support for the agencies to incorporate local information and to utilize existing state and local coalitions and partnerships. Two comments indicate that CCC should provide funding to partnering agencies. Ten comments express concern that such arrangements would increase the administrative costs of the program and thus result in less conservation on the ground. *The Department believes that the opportunity to work with other Federal agencies, local and State partners, including those in the private sector, will improve delivery of the program and is essential to the successful resolution of an area's natural resource concerns. The Department currently uses cooperative agreements and other instruments for activities other than EQIP which involve both financial and in-kind service considerations. Such partnerships have proven to be cost-effective. Both NRCS and FSA may enter into cooperative agreements with others to assist with implementation of the program elements for which the respective agency has principal responsibility. The final rule language has not been changed regarding cooperative agreements.*

A general comment recommends the dissemination of information regarding EQIP through regular channels now in existence and via the Internet. The commenter proposes that an Internet homepage be developed and be placed on-line within 3 months of approval of the final rule. The homepage would contain a copy of the final rule, National and regional points of contact, a list of the priority areas, a list of innovative practices and technologies in use and a point of contact for more information, a list of NRCS offices and links to State NRCS web sites. *USDA and NRCS currently have home pages where information can be obtained. NRCS currently has the EQIP proposed rule and several EQIP fact sheets available, along with a list of NRCS State offices and links to NRCS State web sites. NRCS plans to use all available avenues of media, including the Internet, to provide the final rule, lists of priority areas, the EQIP guidance documents, and other information to the general public. The USDA homepage can be accessed at http://www.usda.gov. The NRCS homepage can be accessed at http://www.ftw.nrcs.usda.gov. No change has been made to the final rule concerning this comment.*

Section 1466.3 Definitions

Agricultural Land

Two comments on this definition: one comment suggests that the term should mean an area on which crops or livestock are intensively produced, while the other comment suggests including the examples given in paragraph 1466.4(d). *The definition has been modified in the final rule to be consistent with the examples given in paragraph 1466.4(d).*

Confined Livestock Operation

Three comments on this definition: one comment supports the definition as proposed; one comment suggests that a size element be included in the definition; the remaining comment suggests that the days of confinement be extended from 45 days to 60 days. *A definition of confined livestock operation has been included in the final rule. It includes the parameters regarding ''confinement'' that were included in the proposed rule. The 45 days included in the definition is unchanged so that it is consistent with a definition for confinement used in the Clean Water Act. This definition is commonly understood and accepted. The Department does not desire to create another definition that may cause confusion or unnecessary administrative burdens on producers. Section 1466.7 addresses how the Department intends to administer large confined livestock operations in the program.*

Conservation District

One comment suggests the term ''Native American Tribe'' not be used in the definition but be replaced with ''Indian Tribe'' according to the Indian Self-Determination and Education Assistance Act of 1975. *The Department agrees with the suggestion on Indian tribes and has incorporated the change in the final rule. A definition of Indian tribe has also been included in the final rule.*

Conservation Management System

One comment requests this definition be clarified in order to distinguish a conservation management system from a resource management system. *A resource management system is a conservation management system that achieves or exceeds a sustainable treatment level for the natural resources. Conservation management systems include other systems that do not achieve sustainability for one or all the natural resources. The definition has been clarified in the final rule.*

Conservation Plan

Six comments on this definition suggest the phrase ''record of a participant's decisions...for treatment of a unit of land or water'' unduly limits the nature and purpose of a conservation plan. Some of these comments state that a conservation plan consists of more than a record of decisions and that the definition should include language such as: identified natural resource problems; a participant's own goals; alternative solutions considered to reach those goals; and, selected solutions to achieve cost-effective environmental management. Additionally, the comments suggest the concept of whole-farm planning be added. *The Department believes that these concerns are addressed adequately in § 1466.6 which describes the purposes and requirements of a conservation plan in greater detail and provides for the broader goals expressed in the comments. No change has been made to the definition.*

Conservation Practice

One comment suggests this definition be expanded to include integrated pest management (IPM) and that IPM should include integrated weed management. *Since the definition for conservation practice includes reference to a land management practice, and the definition of land management practice includes IPM, the definition of conservation practice includes IPM. The Department believes that IPM includes integrated weed management and further definition is unnecessary. The definition is intended to be generic in nature and reference to specific practices was not intended. Therefore, the definition for conservation practice remains as proposed.*

Land Management Practice

Fifty-two comments suggest changes to this definition. Thirteen comments request ''irrigation management'' should be included under the definition of land management practice. Efficient irrigation practices are supported in 36 comments and most of these comments suggest the term ''efficient irrigation'' be added to the description of eligible conservation practices. *The proposed*

rule included irrigation management under this definition. The Department has modified this in the final rule by referring to ''irrigation water management'' which better describes the intent of the practices and incorporates the concept of efficient irrigation.

The other comments request additions to the example practices listed under land management practices: two comments suggest adding tree planting and one comment suggests adding wellhead protection, crop rotation, cover crop management, and numerous other practices. One comment suggests adding ''including grazing lands, wetlands, and wildlife habitat'' after ''related natural resource concern.'' *The practices listed in the definition are illustrative and not intended to be exhaustive. Tree planting is a vegetative practice and has been included in that definition. A definition of ''related natural resource'' has been included in the final rule. The Department believes that the definition of ''land management practice'', as proposed, encompassed the suggested concepts adequately and does not require changes.*

Livestock, Livestock Production, and Livestock-related Natural Resource Concern

One comment suggests the definition of livestock should include honeybees. One comment on livestock production suggests rotational grazing, fencing, and water development practices should be included in the definition. One comment on livestock-related natural resource concern suggests the spread of noxious weeds via animal waste from confined feeding operations should meet the requirements of this definition. *The Department believes that honeybees should not be considered as livestock but honey is an agricultural food product, thus honeybee keepers are eligible agricultural producers. The other specific suggestions are best left to the NRCS State conservationist in consultation with the State technical committee. No changes have been made to the subject definitions in the final rule.*

Local Work Group

Forty comments concern this definition. Most of the comments request the membership of the local work groups be expanded to others outside of government and provide excellent reasons why certain individuals and organizations could provide information and ideas that would be valuable to the program and the responsibility of the local work groups. *Membership of the local work groups is limited to Federal, State, Indian Tribe, and local government representatives because of restrictions applicable to private advisory panels by the Federal Advisory Committee Act (FACA). Given that almost 3500 separate local work groups are estimated to be established to advise on the implementation of the program, the Department felt that it was unfeasible and burdensome to fulfill possible FACA requirements when establishing each local work group. The Department expects and anticipates that these various representatives who serve on the local work group will request and receive ample information and ideas from the public and their respective constituents. Therefore, no changes are made to this definition.*

Private Agribusiness Sector

Five comments suggest the term ''agricultural input retail dealers'' should be included in the definition since this term was used in the statute. One comment recommends a very broad interpretation of ''agribusiness.'' *The Department intends to have a broad interpretation of this definition so that the largest number of private sector professionals may provide services for the program. The final rule has been changed to include ''agricultural input retail dealers.''*

Resource Management System

Two comments request this definition include grazing lands, wetlands, and wildlife habitat. *The term ''related natural resources,'' which has been included in the final rule, includes these concerns and further inclusion in the definition of resource management system would be redundant. Therefore, no changes were made to this definition.*

State Technical Committee

Six comments concern representation on the State technical committee and guidelines concerning the structure and operation of such committees. *NRCS intends to publish a rule on the structure and purpose of the State technical committee in a separate rulemaking, and shall consider these recommendations regarding committee representation and guidelines as it develops that rule.*

Structural Practice

Four comments recommend this definition include specific mention of ''irrigation water, conveyance, and application equipment'' as examples of structural practices. *The practices listed in the definition are illustrative and not intended to be exhaustive. The Department believes that the definition as proposed encompassed the suggested concepts adequately and does not require changes.*

Unit of Concern

Eight comments request clarification of this definition, one of which expresses concern that the definition had no limits, three of which recommend inserting the concept of whole-farm planning, and the remaining four of which recommend limiting the definition to the portion of the property upon which the conservation practice will occur. *The Department believes that a unit of concern can vary depending on the natural resource concerns and the objectives of the participant. A unit of concern can be a whole farm or a portion thereof. The conservation plan must address the conditions that cause or influence the natural resource concern for which the plan is being developed. Therefore, information from outside the defined unit of concern may be considered where it is necessary to develop the best strategy for meeting the producer's objectives and resolving the natural resource concern. No changes have been made in the final rule for this definition.*

Vegetative Practice

Four comments concern the examples used to describe vegetative practices, one of which recommends deleting permanent wildlife habitat as an example and the remaining three of which recommend including tree planting as an example. *The practices listed in the definition are illustrative and not intended to be exhaustive. Tree planting has been added as an example in the final rule. Permanent wildlife habitat was listed as an example in the statute and has been retained in the final rule.*

New Definitions

Several commenters suggest new definitions be included in the final rule, including: agricultural producer (2 comments); cost-share and incentive payments (4 comments); environmental benefits index (1 comment); Indian tribe (1 comment); Indian trust lands (2 comments); and liquidated damages (1 comment). *The Department will include a procedure in its program guidance for determining an eligible agricultural producer. The term ''environmental benefits index'' is not used in the final rule and, therefore, has not been defined. Definitions for cost-share payments, incentive payments, Indian tribe, Indian trust lands, and liquidated damages have been included in the final rule.*

Section 1466.4 Program Requirements

Four comments support the voluntary aspect of the program. *No change was made in the final rule concerning the voluntary aspect of the program.*

One commenter suggests the wording of the second sentence in paragraph 1466.4(a) should be changed to indicate a participant should develop a conservation plan ''in accordance with'' the local conservation district, instead of ''in cooperation with.'' *As provided in 1466.6(a), USDA agrees that the conservation plan should be approved by the local conservation district, but the plan must also meet the purpose of the program and be acceptable to NRCS. The Department believes the phrase ''in cooperation with'' better reflects the role of the local conservation district. No change was made in the final rule regarding this comment.*

There were 37 comments regarding the use of EQIP funds for providing technical assistance. Although not included in the proposed rule, 21 comments recommend an unspecified maximum cap be established for the use of program funds for technical assistance, one commenter suggests a 10 percent cap, and eight commenters suggest a 5 percent cap to be consistent with the former ACP. One comment supports funds for technical assistance but recommended that FSA committees should determine the amount. One comment said that no funds should go to technical assistance but it should all go to farmers. Four comments support the use of funds for technical assistance noting that without sufficient technical assistance funding it will be difficult for farmers to satisfactorily perform the conservation work. One commenter suggests the cooperative extension service should receive EQIP technical assistance funding for personnel who are providing assistance to producers. *USDA believes that voluntary conservation programs are most successful when sufficient amounts of technical assistance, educational assistance, and financial assistance are provided to producers to aid them in natural resource conservation activities. The 1996 Act amended the 1985 Act to provide that the Secretary of Agriculture is authorized to provide technical, educational, and financial assistance to eligible farmers and ranchers using EQIP. The 1996 Act further stated that the amount of technical assistance provided should be in an amount according to the type of expertise needed, the quantity of time involved, and other factors as determined appropriate by the Secretary. USDA believes that EQIP will require a greater level of technical assistance than the former ACP because EQIP will be dealing with a broader array and more difficult natural resource concerns. Unlike ACP, EQIP will also include conservation plans and long-term contracts for all participants. The 5 percent reimbursement in ACP was not intended to reflect the actual cost for technical assistance. Further, the former GPCP and CRSCP, which were also replaced by EQIP, required technical assistance levels in excess of 5 percent to attain the conservation purposes of the programs. The former conservation programs have shown USDA that a specified rate of technical assistance funding should not be established by rule because natural resource conditions and concerns change over time and the Department needs the ability to adapt to those changing conditions and concerns. USDA believes that NRCS, which will deliver much of the technical assistance in EQIP, should determine the amount of funds needed for this purpose. When making this determination, NRCS will consider its available resources from all programs, and those of other public and private sources of technical assistance. Paragraph 1466.4(b) has not been changed in the final rule.*

Two comments were received regarding control of land as provided in paragraph 1466.4(c)(2)(i). One comment suggests a separate paragraph should be added concerning ''Indian trust land'' because the proposed rule does not clearly show that Indian tribes are among the eligible parties. Another commenter suggests ''communal land'' ownership and leasing arrangements in the Pacific Basin should be eligible for EQIP, including those cultural situations where land assignments are given without written leases. *Program guidance will identify the type of evidence needed to show that an applicant has an adequate control of land. Written leases may be one of the types of evidence, as will historical use of the land and other evidence. Paragraph 1466.4(d) has been amended to clearly show that tribal, allotted, and Indian trust lands are eligible lands.*

One comment states it is burdensome for tribal governments responsible for a vast and complex system of agricultural lands to be required to list all lands under their control, and requests the informational requirements should be lessened for tribes. *The Department believes this comment concerned the requirement for listing agricultural lands so that it can determine if an applicant is in compliance with the highly erodible land and wetland conservation provisions. All applicants must comply with these provisions to be eligible for EQIP, including Tribes that receive certain Departmental benefits. However, the Department will work with Tribes to develop processes which minimize the administrative burden while meeting the requirements for eligibility. For example, an authorized representative of the Tribe or Bureau of Indian Affairs may certify compliance with the highly erodible land and wetland conservation provisions on behalf of the entire Tribe.*

Five commenters express concern that EQIP does not appear to include forest lands. Two comments state a concern that tree planting will not be eligible for program assistance. *The Department believes that forest land, like all other eligible land, must have natural resource problems or pose a threat to natural resources to be eligible for EQIP assistance. Tree planting and other forest land-related conservation practices are eligible for EQIP assistance if they are used to address or resolve the identified natural resource concern. Paragraph 1466.4(d) of the final rule states that forest land may be eligible for enrollment in EQIP; this has not been changed from the proposed rule.*

The Department received 13 comments about the targeting of 50 percent of EQIP funds to livestock-related natural resource concerns. Four comments support this targeting level. One comment urges that funding should be targeted to conservation practices other than expensive animal waste management facilities. One comment suggests the funds should not be targeted to livestock but should be targeted toward encouraging new methods of crop production that reduce soil erosion and improve water quality. One comment encourages a minimum level of $50 million annually be targeted to conservation on private grazing land. One comment recommends the 50 percent level be distributed and measured at the state level, not at the national or local level. Six comments note that only the preamble to the proposed rule mentioned the 50 percent target level and the final rule should clarify the targeting of funds toward livestock-related natural resource concerns. *The 1996 Act requires that 50 percent of available funds be targeted to conservation practices related to livestock production. The final rule has been clarified by adding paragraph 1466.4(e) which addresses the targeting of available EQIP funds to livestock-related natural resource concerns, including concerns on grazing lands and other lands directly attributable to livestock. The target of 50 percent of the funds will be measured at the national*

level since livestock-related natural resource concerns are not evenly distributed in States or at the local level. USDA believes that some priority areas may have none or little natural resource concerns related to livestock production, while other priority areas may have significant concerns related to livestock production. For that reason, no further targeting of funds will be made such as the suggestion to target $50 million to grazing land management. Conservation practices that could be eligible to address livestock-related natural resource concerns include, but are not limited to, grazing land management, livestock exclusion, animal waste management facilities, nutrient management, and streambank and riparian area protection. Consistent with the overall goal of maximization of environmental benefits per dollar expended, the Department will place emphasis on low-cost measures which result in the highest benefits; higher cost practices, such as animal waste management facilities, will be eligible if the investment yields substantially high environment benefits.

Four comments concerned paragraph 1466.4(d)(2) which places restrictions on the eligibility of publicly owned land. One commenter supports the provisions in the rule because it would allow ranchers to use EQIP to apply conservation practices on leased public grazing lands. One commenter suggests publicly owned school land should be eligible if leased to farmers. One commenter suggests that sentence 1466.4(d)(2)(ii) of the proposed rule should not restrict practices which will primarily benefit the government landowner but should permit funding of practices that are consistent with management plans of the public landowner. One commenter suggests that sentence 1466.4(d)(2)(iii) should be rewritten to ''conservation practices will contribute to an improvement in the identified natural resource concern.'' *The Department believes that the program should be used to benefit the environment, including those instances where producers use publically owned land. The proposed rule sentence stating that government landowners should not be primary beneficiaries of the program has been deleted in the final rule. Paragraph 1466.4(d)(2) allows ranchers who lease public grazing lands and producers who lease public school land to use EQIP on the publicly owned land if the stated criteria are met. Sentence 1466.4(d)(2)(ii) has been rewritten in the final rule to ''conservation practices will contribute to an improvement in the identified natural resource concern.'' USDA believes the provision in sentence 1466.4(d)(2)(iii) requiring written authorization from the government landowner enables the government landowner to ensure the conservation practices are consistent with public land management plans; this sentence has not been changed in the final rule.*

Section 1466.5 Priority Areas and Significant Statewide Natural Resource Concerns.

USDA received 27 comments in support of focusing the program in priority areas. One statement that typifies the comments said this focus ''reinforces the concept these are not ''entitlement'' dollars but funds intended to meet Congressional articulated goals of improved water quality and natural resource conservation.'' Thirty-eight comments disagree with the focus of the program in priority areas mostly because it will restrict availability of funds to the specific priority areas. Eighteen comments indicate support to continue ACP or to use the ACP process of allocating funds to all counties to, as one commenter stated, ''ensure that every county gets a piece of the pie.'' *USDA believes that primarily offering the program in priority areas throughout the Nation is needed to help assure that the most environmentally sensitive areas are considered and funds are directed to the areas in most need. The use of the priority area concept focuses assistance on those areas that pose the most serious threats to soil, water, and related natural resources, including wildlife habitat and natural resources on grazing land and wetlands, and to make environmental enhancements. The program will also provide the most important natural resource benefits in a cost-effective manner. Implementation of conservation measures will be accelerated in these areas. Past experience has shown that by focusing program assistance, greater environmental benefits are derived. Providing program assistance to significant statewide natural resource concerns outside of funded priority areas will result in widespread eligibility of producer. No change was made in the final rule concerning the focusing of the program in priority areas.*

One comment indicates natural resources that are shared by multiple counties and States merit special consideration in the program. USDA agrees with this comment. *This was addressed in large by defining priority areas as watersheds, regions, or areas of special environmental sensitivity or having significant soil, water, or related natural resource concerns. Using environmental and natural resource concerns means that political boundaries should be ignored. The NRCS Regional conservationists will coordinate guidance for multi-state areas and regions. No change was made in the final rule concerning natural resources that are shared by multiple counties and states.*

Several comments suggest specific natural resource concerns should have higher priority or consideration when determining priority areas. Five comments favor water quality. Six comments favor wildlife habitat with one commenter suggesting that wildlife should be a required concern in all priority areas. Urban-influenced or non-agricultural areas are favored by three comments. Pollution prevention is favored by two comments in lieu of clean-up or corrective measures to existing problems. Three comments favor a balanced, comprehensive approach to natural resource concerns instead of solely addressing water quality. *The Department believes that a balanced, comprehensive approach should be used to address natural resource concerns to provide the greatest net benefits to society. Soil, water, air, grazing land, wetland, forest land, wildlife habitat, and other related natural resources are given equal initial consideration for treatment in the program. A definition of ''related natural resources'' has been added in the final rule. The final rule has also been changed in several areas to better clarify this equality of natural resource concerns.*

Five comments concern the coordination of priority areas in EQIP, the CRP, WRP, and other programs. Two of these comments recommend a consolidated or uniform selection process for priority areas in these programs. One comment suggests these programs should be leveraged together to ensure successful implementation of priority areas. Two comments said it would be beneficial if each program had its own priority areas. *USDA agrees with aspects of each of these comments. Close coordination of priority areas in these various program is very important. The programs can be used collectively, but without duplication, in certain priority areas to successfully achieve the goals of the priority area. Likewise, certain priority areas may only need one of the individual programs. The locally led conservation efforts will advise and assist the Department with identifying how and where the various conservation programs can be utilized best. USDA is working on the development of a single, coordinated, and consistent process for*

selection of priority areas for each of the USDA conservation programs. Included in this process will be the ability to have specific priority areas for each program. Therefore, no change has been made to the final rule concerning coordination of priority areas in EQIP, CRP, WRP, and other programs.

Two comments suggest the priority area designation process is too encumbered, subject to too many layers and reviews, and should be streamlined. *The hallmark of the process for selection of priority areas is the locally led conservation effort which features the involvement of local work groups and State technical committees providing advice and recommendations to the Department. This process may include several layers of review and recommendations, but the Department believes this process will result in the greatest possible involvement of local and State stakeholders and flexible assistance to farmers and ranchers. Further streamlining of the process may result in a less localized decision-making process with most decisions made at the national level. No changes have been made in the final rule concerning the priority area designation process.*

USDA received 14 comments suggesting local work groups need to have more involvement by producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level. *USDA agrees that involvement of producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level is important for the local work group to effectively provide advice and recommendations concerning the program. USDA believes, however, this involvement and input can be better achieved with local conservation districts leading the groups which include FSA county committees. Local work groups will be able to work efficiently as they consider the public input and provide information to the Department and others. Some members of the local work group already are farmers and ranchers. The public, including producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level, are encouraged to provide input and information to the local work group. The final rule has been changed to encourage the public to provide input and information to the local work group.*

One comment asks if priority areas will change each year or if they are established through fiscal year 2002. Another comment states there should be a procedure for refining or terminating a priority area. *USDA believes priority areas can have various periods of time that they will be designated and funded. Some priority areas may need only one to three years to accept a sufficient number of contracts that, when fully implemented, will achieve the natural resource goals identified for the area, while other priority areas with extensive or complex concerns may require a longer period to enter into contracts to achieve the natural resource goals. Nevertheless, it is expected that EQIP assistance to a priority area should be limited to a reasonable number of years to enter into contracts to achieve the natural resource goals. This will enable other priority areas to be designated and funded in a more timely manner. The final rule has been changed to clarify that funding may be approved for one or more years. Program guidance will be developed on terminating or ceasing funding to a priority area.*

One comment urges the Department to reconsider the maximum area to be included in a priority area. The commenter notes that the North Dakota prairie pothole region is a large area of the state and would not qualify as a priority area under the proposed rule. *USDA had not specified a maximum or minimum size constraint for a priority area in the proposed rule. USDA does not believe a rigid size constraint should be incorporated in the rule because natural resource concerns vary significantly in scope and extent. Program guidance will be developed for priority areas concerning size or scope, however, so that natural resource goals of the priority area are measurable and achievable in a reasonable period of time. No addition was made in the final rule concerning maximum or minimum size of priority areas.*

One comment suggests the ''shall'' in the second sentence of paragraph 1466.5(a) be changed to ''may.'' This would then indicate that NRCS may give special consideration to applicants in priority areas who have conservation plans that address the natural resource concern(s) for which the priority area was designated. *USDA believes that providing special consideration to applicants that address the natural resource concern(s) for which a priority area was designated is consistent with § 1240C of the 1985 Food Security Act, as amended by the 1996 Act, which states ''the Secretary shall accord a higher priority to assistance and payments that (1) Are provided in conservation priority areas.'' Providing special consideration to applicants that address the natural resource concern(s) for which a priority area was designated will enable the natural resource goals in the priority area to be achieved. No change was made in the final rule concerning the suggested comment.*

Six comments support the provision in paragraph 1466.5(b) which allows the use of program assistance to address significant statewide natural resource concerns that are outside of priority areas. *No change was made to the final rule concerning program assistance to address significant statewide natural resource concerns.*

The Department received 36 comments that support the use of local work groups and the locally led conservation activities as described in paragraph 1466.5(c). Most comments note that identification of natural resource concerns and priorities is done best at the local, grass-roots level. Two comments suggest the local FSA county committees should be equal partners and have input in determining priority areas. Nine additional comments disagree with the locally-led process. Two of these commenters disagree because they believe the decisions should be made at the state level; two said there are too many players or layers of bureaucracy involved; one said that FSA county committees should make the decisions. *The Department believes that locally led conservation efforts, including those which involve local work groups, are very important to the success of program. Local work groups provide information to the Department on EQIP-related items and on other conservation programs and activities. FSA county committees are equal members of the local work group and, as such, will have input in developing and recommending priority area proposals. This process may include several layers of review and recommendations, but the Department believes this process will result in the greatest possible involvement of local and State stakeholders and flexible assistance to farmers and ranchers. Further streamlining of the process may result in a less localized decision-making process with most decisions made at the national level. The roles of the local work group have been retained in the final rule.*

Three comments concern the designation of the chair of the local work group. One comment favors NRCS chairing the group and two comments disagree with this approach, suggesting the local work group should select the chair. *The Department has decided that NRCS should not be required to be the chair of the local work group and the members of the local work group should decide who should be the chair, if one is needed.*

One comment suggests that because conservation districts will be organizing local stakeholder groups to guide the delivery of Federal conservation programs at the local level, the name of the group which will advise USDA should be called the ''USDA Local Farm Bill Team.'' This would help to differentiate the two groups and should help dispel the perception that the new programs, including EQIP, will not be as locally driven as Congress intended. *The Department applauds the efforts of conservation districts to organize local stakeholder groups to provide input into the locally led conservation effort but does not believe the use of the term local work group will create a misunderstanding at the local level. The local work groups may advise the Department on EQIP-related items and on other conservation programs and activities. They may also choose to advise other organizations and government agencies. No change was made in the final rule concerning this comment.*

One commenter notes that conservation districts are not organized in all areas of the Nation and that provisions should be made for another agency or group to lead and coordinate the local work group in the absence of a conservation district. *Program guidance will include a provision whereby NRCS shall convene the local work group in the absence of a conservation district.*

USDA received one comment that recommends that entities other than a Federal, State, or local government agency should be able to make a proposal for a priority area. *Paragraph 1466.5(c) in the final rule has been modified to enable private entities to identify a priority area to the local work group.*

USDA received three comments suggesting that working procedures for local work groups should be clarified. *The Department does not believe that working procedures need to be included in the final rule. Working procedures and other suggestions for effective organization and operation will be provided in guidance documents.*

Three comments encourage multi-county local work groups for multi-county priority areas. One commenter supports the designation of a lead NRCS conservationist to coordinate activities between the local work groups in a multi-county priority area. *The Department agrees with these comments and will incorporate these recommendations in program guidance.*

One comment recommends that conservation districts should provide public notice of intent to organize a local work group. *Due to the membership of the local work group, publishing a public notice of intent to organize a local work group is not required by Federal law. Conservation districts, as subdivisions of State governments, may need to consider this recommendation if required by a State law. Also, conservation districts may chose to publish public notices even if not required by law but the district decides this is the best way to proceed.*

USDA received one comment suggesting that because Indian tribes are sovereign governments, they should be on local work groups. *The definition of local work groups in the proposed rule identified Indian tribes as members and this definition has been retained in the final rule. A definition of Indian tribes has been included in § 1466.3 of the final rule.*

Twelve comments concerned the priority area assessment. Two comments said the assessment will be too troublesome and time-consuming. Seven comments suggest the use of existing natural resource assessments, studies, data, and plans to avoid duplication of work and to increase credibility of the priority area assessment. Two commenters ask if demographic information on population meant that EQIP would favor an area with greater population instead of selecting areas because of environmental conditions. One comment suggests the assessment described in paragraph 1466.5(c) should have quantified information ''when and where possible'' and that the ways ''and means'' to measure performance should be included. *The final rule refers to priority area ''proposals'' (instead of assessments) to better reflect the nature of the item and to reduce confusion with other natural resource assessments. USDA believes the proposals are needed to adequately and correctly designate an area as a priority area, and agrees that existing natural resource assessments, studies, data, and plans should be incorporated into the proposal. Environmental and natural resource conditions, as described in paragraph 1466.5(d)(1), are the principal factors which will be considered when designating a priority area. The recommended language change concerning use of quantified information and ways and means to measure performance have been included in the final rule.*

Six comments suggest NRCS, State technical committees, and local work groups should closely coordinate the process to assess natural resource concerns and identify priority areas with existing efforts at the local and state level. Such efforts may be water resource planning activities, nutrient and manure management programs, or state agricultural conservation programs. *The Department agrees with the recommendation and such guidance will be incorporated in guidance documents being developed to assist the local work groups.*

One comment suggests paragraph 1466.5(c)(4) be modified to read ''The existing staff and incentive, education, and on-farm research programs available at the Federal, State, and local levels, both public and private, to assist with the areawide activities.'' *The suggestion has been included in the final rule.*

USDA received 25 comments in support of the State technical committee making recommendations and the decisionmaking role of NRCS State conservationists. Three comments disagree with the roles of the State technical committee and the NRCS State conservationist, suggesting the decisions should be made at the national level. *USDA believes the roles of the State technical committee and the NRCS State conservationist are best performed at the state level and not at the national level. No change was made in the final rule concerning these comments.*

One comment suggests the State technical committee should develop guidance to local work groups on natural resource information, data, and priorities. *State technical committees and State conservationists may develop guidance to assist local work groups. This will be set forth in program guidance.*

USDA received two comments suggesting the State technical committee and State conservationist should ''concur as much as possible'' with the input from local work groups on designations of priority areas. *Paragraph 1466.5(d) of the final rule identifies how and on what the NRCS State conservationists shall base their decisions to designate priority areas. State conservationists will base decisions on the recommendation of the local work group and State technical committee, among other factors. Only after considering the various criteria and factors identified in this paragraph, and determining that a proposed priority area is worthy of program assistance, will a State conservationist designate a priority area for EQIP assistance.*

Several comments address State technical committees issues that are not EQIP-related, including: one comment suggests the ''consensus process'' is unrealistic and that voting should be used instead; one comment states the State technical committee should have

Indian tribe representation; and, three comments offer procedural and membership suggestions for State technical committees. *The Department will consider these comments in the rulemaking process for State technical committees.*

One comment recommends State governments should be allowed to designate their own priority areas. *The Department believes that the final rule provides State governments with the ability to make proposals for priority areas and no further change has been made to the final rule.*

One comment supports the provision in per paragraph 1466.5(d)(1) that enables NRCS to consider wildlife and wildlife habitat quality and quantity in determining the significance of natural resource concerns in a priority area. *No change has been made to the final rule concerning this comment.*

Two comments suggest paragraph 1466.5(d) should state ''NRCS will give special consideration to priority areas that contain multiple conservation benefits.'' *USDA believes that multiplicity of conservation benefits alone does not justify special treatment. The priority area, whether achieving a single conservation benefit or a range of benefits, must result in significant environmental benefits to justify the expenditure of EQIP funds. The final rule includes a sentence reflecting this consideration.*

One comment suggests 1466.5(d)(1)(v) should recognize the importance of saline characteristics of land and water. *USDA agrees with the comment and the final rule has been revised to ''(v) Saline characteristics of land or water.''*

One comment suggests 1466.5(d)(1)(viii) should state ''Quality and intended use of the receiving waters, including fishery habitat and source of drinking water supply.'' *USDA agrees with the comment and the final rule has been revised as suggested.*

One comment suggests 1466.5(d)(1)(xi) should indicate that natural hazards may include pest problems which threaten natural resources. *USDA agrees with the comment and the final rule has been revised to ''(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.''*

Five comments refer to consideration of the coordination with and level of support from other programs when allocating funds to priority areas. One comment supports the consideration of the level of support from other State or local programs. One suggests better coordination effort between programs is needed so that taxpayer's money is not wasted. One suggests EQIP funds will be most effectively spent in areas that have no other funding sources. Two suggest funding sources such as from private programs should be considered. One comment suggests both direct and in-kind contributions should be considered. *The Department believes that Federal program funds can be effectively spent in areas where other sources of funding are also available, thus allowing both the Federal and other funding sources to be stretched and made available in other areas. It also agrees that coordination between Federal, State, and local programs is important, and that private funding sources, direct, and in-kind contributions should be considered. Paragraphs 1466.5(d)(2)(vi) and 1466.5(f)(2)(vi) have been revised in the final rule to reflect these recommendations.*

One comment suggests EQIP should be used to assist producers in complying with Tribal environmental laws as well as with Federal and State environmental laws. *USDA agrees with the comment and has included the suggestion in 1466.5(d)(2)(vii) and 1466.5(f)(2)(vii) of the final rule.*

USDA received several other comments concerning the criteria or factors which should be used to select or fund priority areas, including national conservation priority areas. Two comments suggest that clear, minimum criteria should be established to assist with the selection process. One comment suggests the criteria should include soil quality. One comment recommends that existence of education, research, and demonstration farm plans should be part of the criteria. One comment recommends that existence of monitoring and evaluation plans be included. *The Department suggested criteria or factors in the proposed rule language in paragraphs 1466.5(d)(2) and 1466.5(f)(2) to facilitate a broad range of considerations and still believes that this is the appropriate approach. The specific recommendations of the commenters will be included as illustrations of ''other factors'' in the guidance being developed for the program. No change has been made in the final rule to address the comments.*

USDA received comments on paragraph 1466.5(e) concerning the approval of significant statewide natural resource concerns. One comment suggests using criteria such as adjacency to a public natural resource, site characteristics that will affect the likelihood of achieving conservation objectives, and cost to achieve the benefits. One comment suggests that wellhead protection and capping abandoned wells would be good examples of significant statewide natural resource concerns. *The Department agrees with the concepts suggested in the comments and will include this information in program guidance. Actual determinations of significant statewide natural resource concerns are made by the NRCS State conservationist, in consultation with a State technical committee. No change has been made in the final rule to address the comments.*

In regards to national conservation priority areas in 1466.5(f), two comments specifically favor the designation process described in the proposed rule. One comment disagrees with the process, preferring that all decisions should be made at the state level. One comment received by USDA said that the process for identifying national priorities is in part only ''lip service'' to certain groups. The commenter finds the proposed rule lacking as to the significance of national conservation priority area designation and suggests that the designation should result in additional funds to the area. *The Department believes the process described in the proposed rule is appropriate, has value, and will result in greater emphasis for assistance being placed in the designated area(s). Areas of national significance should be designated at the national level. No change has been made in the final rule to address the comments.*

USDA received three comments which suggest use of a national technical committee is needed to ensure participation by national level partners. Eleven comments suggest or nominate specific areas as national conservation priority areas, including: Colorado River basin (5 comments), Great Lakes basin (2), Illinois River basin (2), Chesapeake Bay basin (1), Devil's Lake basin, ND (1), Hudson River basin (1), California pilot recharge program (1). *USDA does not believe that a national technical committee is needed to ensure participation of national level partners. The Department has made effective use of interagency teams throughout the development of the EQIP program and other conservation programs and believes that an interagency team consisting of Federal agency partners will ensure national level participation. The Department will consider the suggestions made when designating national conservation priority areas. Paragraph 1466.5(f)(1) has been changed in the final rule to enable nominations for designating national*

conservation priority areas to be made to the Chief from Federal, State, tribal, or local government agencies, or from private groups or entities.

USDA received two comments recommending that the national conservation priority area designations should be subject to formal rulemaking procedures with public input to assure that the designations have merit. *The Department believes the process established in the final rule will assure that the public has the opportunity to provide input into the designation and that the designations have merit. No change has been made in the final rule to address the comments.*

Concerning the criteria to be considered when selecting national conservation priority areas, several comments were received. One comment suggests environmental significance and multi-state natural resource concerns should be primary selection criteria. Two comments recommend a greater emphasis on international, interstate, or regional concerns, such as migratory bird habitat, be considered. *These comments are consistent with the national program objectives and criteria that the Department intends to use when designating national conservation priority areas. These suggestions will be incorporated in national guidance developed for the program. No change has been made in the final rule to address the comments.*

Twenty comments support the educational assistance to be provided in the program. Of these comments, two also note that the proposed rule did not include specific mention of how the education assistance would be provided. Seven of the comments state the Extension system should be the primary delivery mechanism for the educational needs. Three of the comments state the Extension system and other public and private education providers should be involved. One of the comments suggests wellhead protection should be the topic of education and another comment suggests education on control of noxious weeds. *USDA's development and delivery of high-quality educational opportunities to farmers, ranchers, and assistance providers should enhance the public's knowledge about the conservation opportunities available through EQIP, will aid in implementing their conservation plans, and enhance the overall benefits that will be realized through the implementation of the program. Appropriate education will maximize public benefits by creating a knowledge base (among producers, agency staff, and private consultants) that will extend direct EQIP benefits beyond the actual acreage and life expectancy of financial and technical assistance programs. The final rule includes specific direction for the delivery of education assistance in paragraph 1466.5(h). The provision specifies that NRCS will develop an education plan for a State or priority area. The plan will include, among other things, a description of who will be the education providers. While USDA expects the Extension system to play a significant role in developing the education plans and delivering educational assistance, other public and private education providers are also expected to have significant roles where appropriate. Thus the need for cooperation and coordination among all education providers. The Department believes there are many important topics that can be the focus of educational efforts, including wellhead protection and control of noxious weeds in an environmentally sound manner, but the specific education topics should be determined at the State and local level.*

USDA received numerous comments concerning the funding decisions for EQIP. Two comments support the need for fund decisions at the national level. One comment suggests the NRCS Regional conservationist should make the funding decisions. Eight comments recommend the funding decisions be made at the state level and twelve comments suggest that all funding decisions should be made at the local level. *The Department has revised the provisions for funding decisions in paragraph 1466.5(i) to clarify how these decisions will be made to meet the purposes and intents of the program. USDA believes EQIP must be administered differently than the programs it replaces, including the methods for making funding decisions.*

The Department is committed to making funding decisions based on: The environmental needs and natural resource concerns; the need to maximize environmental benefits per dollar expended; the capability of the partners involved in the proposal to provide flexible technical, educational, and financial assistance; the conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of part 12 of this title and Federal, State, and tribal environmental laws; the opportunity for encouraging environmental enhancement; the anticipated or proven performance of the partners involved in the proposal in delivering the program; and, other relevant information. Funding proposals for State-level approved priority areas are reviewed and competitively ranked in consultation with the State technical committee.

The State technical committee is comprised of professional natural resource managers who represent a variety of disciplines in soil, water, wetlands, plants, wildlife management, and related natural resource and environmental sciences. Members come from agencies such as: NRCS, FSA, Forest Service, CSREES, U.S. Fish and Wildlife Service, Environmental Protection Agency, and other Federal agencies; State agencies responsible for fish and wildlife, forestry, water resources, agriculture, soil and water conservation, and conservation districts; private groups, organizations, or individuals representing agriculture, commodities, agribusiness, environment, land and water management; and, persons knowledgeable about economic and environmental impacts.

After the NRCS State conservationist approves the priority areas, the regional and National levels review the proposals to verify that they meet program guidance and will meet program goals and objectives. A national-level interagency team representing Federal agencies with appropriate expertise and information assists the Chief by reviewing the submitted proposals and making recommendations on adequacy of proposals. The Chief determines funding levels to be allocated to the States, with the concurrence of the FSA Administrator, considering such information as: the environmental and natural resource conditions across the Nation; the interagency team recommendations; recommendations from NRCS Regional conservationists and staff; the funding proposals; and other information identified above in this response. The Chief will also allocate some funds each year using a performance-based incentive reward for the anticipated or proven performance of the partners involved in a proposal in delivering the program in an exceptional manner, and for issues or concerns determined to be of national importance.

After funds are allocated to the NRCS State conservationist, the State technical committee is again consulted on which State-approved priority areas that meet program guidance should be funded and in what amount. The consultation process with the State technical committee in the proposal-approval stage and the funding decision stage helps to ensure that the best proposals are selected and funded.

Twenty-six comments disagree with priority areas receiving the

predominance of funds, but did not recommend a funding level. Five believe priority areas should receive 75 percent of the funds with the remaining 25 percent to significant statewide natural resource concerns outside of priority areas. Three comments suggest a 60 percent priority area to 40 percent outside priority area split. Nine comments favor a 55 percent priority area to 45 percent outside priority area split. Seven comments support a 50 percent priority area to 50 percent outside priority area split. Nine comments favor a 25 percent priority area to 75 percent outside priority area split. Five comments suggest a phase-in approach, starting with more funds to outside priority area and progressively reaching the 75 percent to priority areas in three years. Seven comments suggest no funding percentage should be used to allocate funds but all decisions should be based on environmental need. Two comments suggest each state should receive at least a $2 million base level for work throughout the state. *USDA believes that primarily offering the program in priority areas throughout the Nation is needed to help assure that the most environmentally sensitive areas are considered and funds are directed to the areas in most need. The use of the priority area concept focuses assistance on those areas that pose the most serious threats to soil, water, and related natural resources, including wildlife habitat and natural resources on grazing land and wetlands, and to make environmental enhancements.*

The Department intends to provide more funds where the natural resource and environmental need is greatest but does not intend on having a prescribed percentage or formula published in the final rule because this will limit the Department's ability to respond to changing conditions and needs. However, for FY 1997, at least 65 percent of the available funds nationally will be used in priority areas. To meet future needs, the Department will move to have more funds, perhaps 75 percent or more, directed to priority areas. Providing program assistance to significant statewide natural resource concerns outside of funded priority areas will result in widespread eligibility of producers on the most important natural resource concerns. No change was made in the final rule concerning the focusing of the program in priority areas.

One comment requests that USDA honor all existing commitments to Indian tribes under the former Great Plains Conservation Program. *All contractual commitments to Indian tribes and other contract holders under the former Great Plains Conservation Program, Colorado River Salinity Control Program, Agricultural Conservation Program, and the Water Quality Incentives Program will be honored by USDA. No change was made in the final rule concerning the comment.*

Four comments request that funds should be provided to conservation districts for the administrative work they perform associated with the local work group and other program aspects. *The final rule does not require conservation districts to perform administrative duties in the program. Most of the administrative work will be performed by FSA and the FSA county committees. The final rule enables, but does not require, conservation districts to participate on local work groups and to approve conservation plans which will be used as the basis for EQIP contracts. This is done to meet the spirit of the Congressional Conference Managers who wrote in their Conference Report ''In particular, Congress intends for the Secretary to acknowledge and maintain the historic role of conservation districts in assessing natural resource priorities, approving site-specific conservation plans, and coordinating the delivery of federal conservation programs at the local level.'' The Department does not intend to reimburse conservation districts for their involvement on local work groups or their approval of conservation plans. No change was made in the final rule concerning the comments.*

One comment suggests the Chief should reject or not approve funding to any State-approved priority area, statewide concern, or national conservation priority area that fails to target efforts to the most pressing environmental problems. *The Department agrees with the comment and intends on providing program funds where the natural resource and environmental need is greatest and where the program can be used most cost-effectively. No change was made in the final rule concerning the comment.*

USDA also received six comments on miscellaneous aspects of fund management that were not described in the proposed rule or its preamble. *USDA will consider these comments as it develops its program guidance documents.*

Section 1466.6 Conservation Plan

USDA received nine comments supporting the development and use of conservation plans as described in the proposed rule. One comment opposes the development of plans as a program requirement. *The 1996 Act requires program participants to implement a plan in order to receive program assistance. This provision was incorporated in the proposed rule and no change was made in the final rule concerning the comments.*

Two comments suggest the final rule should include more precise criteria and definitions concerning the acceptability of conservation plans. *The Department will incorporate criteria concerning acceptability of conservation plans in its program guidance documents. No change was made in the final rule concerning the comments.*

USDA received one comment requesting NRCS to develop all conservation plans after a producer applies for the program. Another comment states a farmer who must hire someone to write a detailed plan should have some assurance they will be considered for program payments. *The 1996 Act requires program participants to submit to the Secretary for approval a plan that incorporates conservation practices and is based on such principles as the Secretary considers necessary to carry out the program. Additionally, the 1996 Act requires the Secretary to ensure that the processes of writing and developing proposals and plans for contracts are open to individuals in the agribusiness sector. These provisions were incorporated in the proposed rule and the Department believes that requiring all conservation plans to be developed by NRCS would be inconsistent with the statute. NRCS will, however, be available to provide an eligibility assessment of the farming or ranching operation of the producer as a basis for developing the plan. Additionally, NRCS will be available to assist producers develop conservation plans if requested. No changes were made in the final rule concerning the comment.*

One comment suggests the plans should be called ''EQIP plans.'' *The term ''conservation plan'' is used to reinforce the concept of a single plan for all natural resource conservation activities on a farm or ranch unit of concern. In the past, specific program plans have been developed on the same farm or ranch and, occasionally, the specific plans were in conflict or confusing to the producer. A single conservation plan, if requested by a producer, will help to reduce the potential conflicts and confusion, and will reduce the administrative burdens on the producer. No changes were made in the final rule concerning the comment.*

Two comments suggest the use of the term ''unit of concern'' was confusing. One of these commenters recommended

revising the wording in paragraphs 1466.6(a) and 1466.6(e) to read ''for the farm or ranch unit of concern.'' *USDA agrees with the comments and have changed paragraphs 1466.6(a) and 1466.6(e) in the final rule.*

USDA received one comment recommending a provision be made for a participant to revise a conservation plan (and contract) if necessary to reflect changes in the farm or ranch operation, conservation needs, or schedule of implementation. *The recommended provision is commonly provided for in all Departmental conservation program guidance and will be included in the program guidance documents for EQIP. No changes were made in the final rule concerning the comment.*

USDA received three comments concerning the role of conservation districts in approving conservation plans. Two comments express appreciation for conservation districts approving all conservation plans used in the program. One comment opposes the conservation district role of approving conservation plans. One comment suggests conservation districts should have a role in approving revisions to conservation plans and should have a role in the event a plan is appealed by a participant at a later date. *The Department believes the provision for conservation districts approving conservation plans as a part of the program maintains the historic role of conservation districts approving site-specific conservation plans. Conservation districts will also approve revisions to conservation plans. Roles of agencies during the appeal by a participant of a determination affecting participation are identified in parts 11 and 614 of this title. In its role during appeals, NRCS may consult with the conservation district. No changes were made in the final rule concerning the comments.*

USDA received one comment suggesting paragraph 1466.6(a)(1) be revised to indicate that natural resource concerns will include crop pest concerns. Another comment suggests paragraph 1466.6(a)(2) be revised to indicate that that resource management systems will include pest management systems. *USDA does not believe the suggested revisions are needed. While EQIP will not fund normal and routine farming practices which simply protect crop production, crop pest concerns may create natural resource concerns which EQIP may appropriately address. Likewise, pest management systems, such as integrated pest management, may be considered a resource management system where the adoption of such system would not likely occur absent program assistance and its implementation could yield significant environment benefits. Therefore, the Department did not make changes to the final rule concerning these comments.*

USDA received two comments suggesting paragraph 1466.6(a) should include the words ''including grazing lands, wetlands, or wildlife habitat'' to further describe the related natural resources. *USDA added a definition of ''related natural resources'' which incorporates the suggested words and believes this adequately addresses the comments.*

USDA received one comment suggesting a provision in paragraph 1466.6(a)(2) to allow conservation plans to vary from the NRCS field office technical guide as needed to foster higher value wildlife habitats. *A conservation plan submitted by a participant may foster higher value wildlife habitats or other resource management system, or some portion of that system, than identified in the applicable NRCS field office technical guide. NRCS, as provided in paragraph 1466.6(a)(1), will consider whether the participant will use the most cost-effective conservation practices to maximize the environmental benefits. No change has been made to the final rule concerning this comment.*

USDA received numerous comments concerning the level of treatment that should be required in the program. Three comments suggest total resource management systems be required. Three comments oppose a requirement for total resource management systems. Five comments support encouragement to achieve a resource management system and use of a flexible, progressive planning approach. *The Department believes that the program should provide flexibility to participants who desire to implement one or more conservation practices which impact a range of natural resource concerns. The program has been designed to encourage, but not require, the voluntarily implementation of a total resource management system. However, the number of natural resource concerns incorporated into a conservation plan will not, in and of itself, justify special priority treatment. The conservation plan, whether addressing a single natural resource concern or several, must result in significant environmental benefits to justify the expenditure of EQIP funds. No change has been made to the final rule concerning these comments.*

One comment recommends conservation plans should not focus exclusively on the priorities identified in a priority area or on the significant statewide natural resource concerns, but other concerns should also be addressed. *To meet the purpose and intent of the program, the Department believes the conservation plans submitted by participants must address the priority natural resource concern in the priority area or the significant statewide natural resource concern outside a funded priority area if natural resource conservation goals and objectives in a priority area, a State, or the Nation are to be achieved. Directing program funds to address other concerns will divert funds from higher priority natural resource concerns. No change has been made to the final rule concerning this comment.*

A tiered, multi-level approach to financial assistance is suggested in two comments. This approach would establish a lesser amount of payments (i.e. up to $5,000 per year) for participants who develop a conservation plan with one or two practices to address a single concern. The second level would allow more payments (i.e. up to $7,500 per year) for participants who develop a whole farm conservation plan with resource management systems to address multiple concerns. The highest level would allow the maximum payments (up to $10,000 per year) for using the second level plan plus incorporating a well-designed, on-farm demonstration or research project. *The Department believes the suggestion is a creative manner of providing financial assistance that encourages increased level of treatment to address priority natural resource concerns. The suggestion, however, provides for payment restrictions that are not supported by the 1996 Act, nor do they relate to the actual cost of implementing conservation practices. The Department believes that the proposed rule also provides for voluntary encouragement for increased level of treatment to address priority natural resource concerns without restricting payments arbitrarily. The concept of the suggestion will be incorporated in the program guidance documents. No change has been made to the final rule concerning these comments.*

USDA received numerous comments concerning the use of whole farm or ranch plans. Ten comments suggest that whole farm or ranch plans should be required to be eligible for the program. One comment suggests whole farm and ranch planning should be the focus of plans for the program or, at the least, to reward participants who develop whole farm or ranch plans. Eleven comments oppose requiring whole farm or ranch

plans. Seven comments suggest the program should be used to encourage, but not to require, the development of whole farm or ranch plans by providing a higher ranking to applications, payments for developing such a plan, or providing higher payments to implement the plan. *The 1996 Act enables a participant to implement one conservation practice using EQIP. The Department believes that in order to meet this statutory requirement a whole farm or ranch plan should not be required. However, the program has been designed by the Department to provide for flexibility in carrying out the program. Participants will be encouraged, but not be required, to voluntarily develop a whole farm or ranch plan. The conservation plan will address the conditions that cause or influence the natural resource concern for which the plan is being developed. Therefore, even when a whole farm or ranch plan is not developed, information from outside the defined unit of concern may be considered where it is necessary to develop the best strategy for meeting the producer's objectives and resolving the natural resource concern. Participants who submit a whole farm or ranch plan that maximizes environmental benefits per dollar expended will likely be assigned a higher priority for a contract than would participants who do not submit such a plan. The likelihood of being assigned a higher priority depends on whether the plan will result in significant environmental benefits to justify its priority.*

Ten comments concerned who may provide technical assistance to a participant for the purposes of developing a conservation plan. Nine of the comments support the latitude given to participants to select the service provider. Several of these comments also suggest specific service providers, such as professional foresters, certified crop advisors, and other qualified organizations. One comment states no plan should utilize the products or services sold or owned by the private agribusiness developer of the plan to avoid bias in the plan. *The Department believes that the provisions in paragraph 1466.6(b) of the proposed rule provide the flexibility that the participant needs to select a service provider that is qualified. The provision refers to cooperating agencies, private agribusinesses, and other organizations, and the Department believes that more specific identification is not required. The Department further believes that the program will have sufficient safeguards and oversight so that any bias that may be created by private agribusinesses or other organizations providing technical assistance services will not cause a misuse of program funds. No change was made in the final rule concerning these comments.*

One comment states paragraph 1466.6(b) implies that producers must submit a plan in order to receive technical assistance, and this should be removed. *The first sentence of paragraph 1466.6(b) of the proposed rule stated ''Upon a participant's request, the NRCS may provide technical assistance to a participant.'' The Department does not intend to imply that a producer must first submit a plan to receive technical assistance. A participant must request NRCS to provide the technical assistance, including the development of a conservation plan, if that is the desire of the participant. No change was made in the final rule concerning this comment.*

One comment suggests the final rule provide more clarity on the procedures NRCS will use to address private sector requirements and approval of assistance. *Due to the varying complexities of the technical assistance services that may be provided by non-NRCS personnel, the Department does not believe that program regulations are the most appropriate way to establish these procedures. The program guidance document being developed by the Department will include guidance concerning acceptance of conservation plans, requirements of the private sector and other service providers, and approval of the technical adequacy of work done by non-NRCS personnel. No change was made in the final rule concerning this comment.*

USDA received several comments concerning the use of NRCS field office technical guides (FOTG) for conservation practices. Four comments support the use of the FOTG for conservation practices and methods. Nine comments state the FOTG's are either too narrow in scope or require updating and revising in a timely manner to reflect current conservation practices and technologies, and one of these commenters suggest NRCS should use other documents or references which provide more up-to-date information. Two comments suggest NRCS should assure that FOTG information is shared and consistent across state lines and the NRCS Regional conservationists could be used to assure this happens. Two comments promote involvement of private industry, State, and Federal agencies in the development of FOTG information. One comment asks what standards are used to determine if a natural resource has been protected or improved. *The NRCS FOTG is a dynamic technical document. The FOTG contains the standards for the conservation practices which may be funded in the program. It also includes a section containing many references and documents published by non-NRCS sources, including private agribusinesses and research institutions. NRCS intends to review, on a regular basis, the content of the FOTG to assure that they include the most current elements of conservation practices, including innovations and new technologies. To assist with maintaining the most current elements of conservation practices, including innovations and new technologies, NRCS welcomes the information and input from producers, natural resource conservation professionals, scientists, and the private agribusiness sector. This review, update, and revision is a part of the overall conservation technical assistance activities of NRCS and is not specific to EQIP. In recognition of the rapid change of technology, paragraph 1466.7(a)(3) of the rule provides for pilot work using new technologies or conservation practices. No changes were made to the final rule concerning these comments.*

Ten comments concern the contents of a conservation plan. Two of the comments support the list of conservation plan contents. Two comments suggest the landowner's primary and secondary objectives should be included. One comment states forest types should be included in the plan. Five comments suggest monitoring and evaluation mechanisms must be components of each plan so that outputs can be measured. *The Department believes that an evaluation mechanism is needed so that the outputs and outcomes of each conservation plan, each priority area and natural resource concern, and the entire program can be measured. Each conservation plan will contain information which can be used in the evaluation mechanism. NRCS and FSA will each be using automated data collection systems to assist in the evaluation of the program at all levels. The natural resources identified in sentence 1466.6(e)(2) are intended to be illustrative and are not all-inclusive. Sentences 1466.6(e) (3) and (4) have been amended in the final rule to identify the objectives as those of the participant.*

On the subject of a simplified conservation planning process, seven comments support the proposed rule provision for a single conservation plan. One comment suggest the single plan could include government regulatory

requirements. Another comment suggest that the process should assure participants that the single plan will be recognized by other Federal regulatory agencies. One comment encourages the use of broad-scale planning efforts so that a separate individual plan development and approval process would not be needed when the individual plan is consistent with the broad-scale plan. *The Department will work with Federal regulatory agencies to provide a mechanism for a single conservation plan which they will recognize for their purposes. USDA agrees that the conservation plan development and approval process can be further simplified where broad-scale plans have been developed and is using its conservation programs to encourage the development of such plans. The final rule has been amended to indicate that a single conservation plan could contain government regulatory requirements, to the extent possible.*

One comment suggests paragraph 1466.6(f) be amended to indicate that a single conservation plan could incorporate tribal program requirements. *The Department agrees and has incorporated the suggestion in the final rule.*

Twelve comments state the conservation plan and supporting documentation must be considered as confidential information. Without confidentiality of the records producers will be reluctant to participate in the program. *CCC has determined that conservation plans and certain supporting documentation developed or submitted for EQIP purposes are Federal records and, as such, are subject to the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a. Requests for records will be reviewed under normal rules that apply to such information, with all due concern given to the desire for confidentiality. No amendment was made to the final rule concerning these comments.*

Section 1466.7 Conservation Practices

USDA received 13 comments in support of providing financial assistance for needed conservation practices. Another comment supports financial assistance for upgrading or enhancing existing practices used by participants. *A participant may receive financial assistance for enhancing an existing practice if the existing practice has exceeded its useful life span or if the enhancement provides for substantive improvement in the practice so that it provides a greater impact on the natural resource concern and maximizes environmental benefits per dollar expended. The program guidance document will incorporate this provision and no change has been made to the final rule concerning these comments.*

One comment opposes providing financial assistance for vegetative practices. *The 1996 Act provides for cost-share assistance for ''structural'' practices which includes vegetative practices. The Department believed it was confusing to describe vegetative practices as ''structural'' and incorporated a definition of both structural practice and vegetative practice in the proposed rule. The Department believes the 1996 Act intended to authorize financial assistance for vegetative practices and, therefore, included this provision in the proposed rule. Vegetative practices often provide the most cost-effective conservation alternative to address certain environmental concerns and many structural practices, such as grassed waterways and terraces, incorporate vegetative treatment in the practice. No change has been made in the final rule concerning this comment.*

Seventeen comments express support for financial assistance for various conservation practices, including: water storage pits, pipeline installation, cross-fencing in pastures, vegetative buffers, conservation tillage, livestock watering facilities, pest management, noxious weed management, riparian area protection, wellhead protection and sealing, terraces, controlled drainage, agricultural chemical mixing and storage facilities, oil recycling, tile set-backs, precision farming, fuel storage containment dikes, forage storage leachate control, waste utilization and composting equipment, composting, sustainable farming practices, and grassed waterways. *USDA believes these are examples of conservation practices which may be eligible in EQIP where they provide environmental benefits. To be eligible, the practice must provide the most beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve natural resources or to provide for environmental enhancement. Conservation practices must meet NRCS standards in accordance with the applicable NRCS field office technical guide. No change has been made in the final rule concerning the eligibility of conservation practices.*

USDA received two comments in support of practices that were eligible under the former USDA conservation programs. *Conservation practices eligible in the program to address the natural resource concerns will be identified at the local and State level. Conservation practices which were eligible in the former USDA conservation programs may be eligible if determined to be appropriate to address the priority natural resource concerns. No change has been made in the final rule concerning eligibility of conservation practices.*

USDA received 85 comments which oppose financial assistance for construction of animal waste storage facilities. Most of these comments oppose financial assistance specifically to open lagoons citing problems with odors and leaks. These include 33 comments which oppose funding lagoons for large confined livestock operations but express support for funding other livestock-related conservation practices, such as composting, nutrient management, rotational grazing, pasture management, nutrient testing, and riparian area protection. Three comments agree that financial assistance should be used for construction of animal waste storage facilities, including lagoons. One comment opposes providing 100 percent of the cost to construct manure handling systems. One comment suggests reduced cost-share rates should be given to manure storages as compared to other practices. *The 1996 Act did not limit financial assistance for construction of animal waste management facilities, except for those constructed by a producer who owns or operates a large confined livestock operation. However, the Department believes that placing an emphasis on low-cost practices which yield significant environmental benefits will better achieve the statutory goal of maximization of environmental benefits per dollar expended than a focus on high-cost practices. The Department believes animal waste management facilities are viable conservation practices that, when used in combination of other conservation practices, such as nutrient management, can provide the most cost-effective system for managing animal wastes to address natural resource concerns. Neither the proposed or final rule provides financial assistance of up to 100 percent of the cost of animal waste management facilities but limits the cost-share rate at 75 percent. No change has been made in the final rule concerning these comments.*

USDA received 28 comments in support of manure and nutrient management systems and other livestock-related conservation practices in lieu of providing cost-sharing for manure storages such as lagoons. Twenty-seven comments express support for financial assistance for

conservation practices relating to wildlife habitat, including eleven in support of native plants to aid with wildlife habitat. USDA received 19 comments in support of tree planting, reforestation, or other forestland management measures as eligible conservation practices and another 22 comments were in support of windbreaks and shelterbelts. *The proposed rule provides for land management practices, such as nutrient management, manure management, and wildlife habitat management, for incentive payments, and for cost-sharing of vegetative practices for critical area plantings and permanent wildlife habitat. NRCS vegetative practice standards provide for use of native plants. The conservation practices listed in the rule are for illustrative purposes only and are not intended to be an exhaustive list of eligible practices. Conservation practices eligible in the program to address the natural resource concerns will be identified at the local and State level. Conservation practices may be eligible if determined to be appropriate to address the priority natural resource concerns. Tree planting is a vegetative practice and has been included in that definition. No further changes were made in the final rule concerning these comments.*

Seven comments support the proposed rule process for determining conservation practice eligibility, especially involving State technical committees and local work groups. *No changes were made to the final rule concerning these comments.*

One comment expresses the need to have public comment, through a public notice procedure, on proposed eligible practices in a priority area or state. Another comment expressed the need to involve private agribusinesses in this process. *The public and private agribusinesses will have the opportunity to provide input to the local work group on eligible conservation practices. No changes were made to the final rule concerning these comments.*

Twenty-four comments express support for the proposed pilot work for new technologies and practices. Of these comments, three indicate support for the involvement of others in the pilot testing, such as wildlife specialists, private agribusinesses, producers, and producer organizations. Four commenters indicate alternative livestock practices, pilot programs and on-farm research and demonstration components should be used in EQIP as a means to encourage the use of innovative conservation practices. Two comments express the need to expedite the approval procedure for interim conservation practice standards used on pilot activities. One comment suggests incentives should be provided to users of environmental assessment tools, such as Farm*A*Syst. Another commenter stresses a key to successful implementation of EQIP is flexibility in terms of allowing participants and conservation partners to develop and implement unconventional methods or practices that could spark enthusiasm for the program. *No change has been made in the final rule. NRCS will approve interim conservation practice standards used for pilot work in a manner that allows for timely implementation. The use of environmental assessment tools are encouraged by the Department as a part of the conservation planning process for EQIP, other conservation programs, and conservation planning in general. NRCS State conservationists, using the advice of State technical committees, will determine which conservation practices are needed and are eligible for program payments.*

USDA received the most comments concerning the issue of defining large confined livestock operations for the purposes of providing cost-share payments for construction of an animal waste management facility.

USDA received 161 comments in favor of a national definition of large confined livestock operations of 1,000 animal unit (AU) equivalents. These commenters favor this option primarily because it will provide greater funds to small and moderate farms and ranches and it is consistent with the size requirements for non-point discharge elimination system permits. Six of the commenters also suggest NRCS State conservationists should be encouraged to lower the size limit to fit circumstances in the state, such as State regulations. Three of the commenters suggest the size limit should be less than 1,000 AU in many circumstances.

USDA received several comments which suggest a variety of size limits be established as the national definition. One comment suggests limits of 400 beef cattle, 280 dairy cattle, 40,000 poultry, and 1,000 hogs. One comment favored a 500 beef cattle and 250 hog limit. One comment suggests a 800 beef cattle and 1,000 hog limit. One comment favors a 2,000 hog limit. One favors a single national definition but offers no suggestion on what the definition should be.

Two comments suggest the aggregate total of animals owned by a farmer or rancher at all locations should be the basis for defining a large livestock operation.

USDA received 22 comments which suggest no program funds should go to ''publicly-held'' or ''investor-owned'' corporations. Program funding to only small and moderate farms and ranches is favored by 63 comments.

USDA received 22 comments that state NRCS State conservationists could not or should not decide the definition. A variety of reasons were given in these comments, including five comments about the pressure that would come from inappropriate lobbying by livestock producers; four comments thought the NRCS State conservationist was a State government official; three comments express concern that unfair competition will be created between States due to different definitions; and three comments oppose different definitions in each State.

USDA received 29 comments which favor the proposed rule procedure for defining large confined livestock operation. One of the commenters also recommends allowing exceptions to the State-level definition. One of the commenters suggests the State conservationist could decide up to a limit of 8,000 animals (animal type was not stated). One of the comments also suggests that no more that 20 percent of the livestock operations in a State should exceed the defined limit. Two of the commenters suggest a gross income level of $2 million be used to determine large.

USDA also received 32 comments which favor no size limits be established for large confined livestock operations. Most of these comments recommend the program emphasize environmental benefits rather than size when deciding who should receive payments.

Under provisions of the 1996 Act, producers with ''large confined livestock operations'' are not eligible for cost-share payments on animal waste management facilities, but are eligible for technical assistance on these facilities and program assistance on other conservation practices. The 1996 Act leaves the determination of ''large confined livestock operation'' to the Secretary. In considering how to define large livestock operations, CCC considered the public and agency comments and explored a number of options.

CCC considered establishing a national 1,000 AU threshold, with some exceptions authorized, using the consideration elements specified in the Conference Manager's report. The 1,000–AU threshold was considered because it is employed in the National Pollution Discharge Elimination System (NPDES), authorized by the Clean Water

Act, and used by the Environmental Protection Agency (EPA). This option offers some advantages, because it is consistent with the NPDES, and most family and small-to moderate-size farms are under this threshold and will be eligible for cost-sharing. This option would target more program funds to smaller operations, reduce funds to large operations, and provide flexibility to address State and local environmental needs when exceptions are granted. However, CCC believes this option lacks sufficient flexibility to address State and local variations in operations, creates an exaggerated discrepancy between the implementation of this provision with the overall program goal to maximize environmental benefits per dollar expended, and relates only indirectly to the likelihood that the livestock producer would not otherwise construct a waste management system.

Another option considered was to base the national definition on the amount and environmental threat of manure and other animal waste generated in the confined livestock operation. Although this option would allow choices more closely related to the environmental issues and problems resulting from the animal manure, it also uses a complex and easily challenged process of defining thresholds by weight, volume, or environmental threat.

A third option considered was the use of an economic achievability analysis, which considers the ability to pay for measures to meet environmental objectives. One such analysis is that conducted by EPA, the ''Economic Impact Analysis of National Nonpoint Source Management Measures Affecting Confined Animal Facilities,'' which was completed in 1995. This type of analysis will most likely result in defining the term ''large'' differently for different animal types. EPA's analysis indicates that dairies with 98 AU or more can generally afford to implement animal waste runoff and storage systems without cost-shares. Thresholds for other animal types, as identified by EPA, are: beef feedlots, 300 AU; horse stables, 400 AU; poultry broilers and layers, 150 AU for liquid manure systems, 495 AU for continuous overflow watering; turkeys, 2,475 AU; and swine, 80 AU. This option would be most sensitive to a producer's ability to pay for needed facilities and would make more program funds available to small operations. It would also provide flexibility to address State and local environmental needs. However, there are problems inherent in translating national level data to State and local conditions. Some operations with high potential for environmental benefits would be eliminated from program eligibility. It would be more restrictive toward hog and dairy operations because of the very low threshold levels. If EPA's analysis were used as the basis for determining eligibility, an estimated 45 percent of dairy farms and 20 percent of hog farms would not be eligible. Another problem with this approach is that producers would be required to provide financial records or other evidence of their inability to pay without financial assistance.

A fourth option considered was that an operation would not be eligible for program cost-share funds if the animal waste management facility requires a NPDES permit. No exceptions to this limit would be authorized because its proponents believe that the necessity for a permit is all the incentive that a producer needs to install an animal waste management facility. This option was not accepted because it would provide no flexibility to address State and local environmental needs. Further, EPA has determined that a totally enclosed animal waste management facility with no discharge (and no anticipated or potential discharge) of animal waste to waters of the United States is not subject to the NPDES program. This would make certain ''large'' operations eligible for cost-shares, regardless of a person's ability to pay.

Therefore, having considered all these options and the comments received on the proposed rule, CCC has chosen to not use a hard and fast animal unit number nationally to define a large livestock operation. CCC will consider producers with 1,000 AU or less as eligible for financial assistance for animal waste management facilities if otherwise eligible based on the intent of the program to maximize environmental benefits for dollars spent. The NRCS State conservationist, in consultation with the State technical committee, may develop criteria to use when defining a large confined livestock operation. This State-level definition will be used to determine eligibility for receiving cost-share payments for animal waste management facilities. CCC will provide national guidance, developed by NRCS in consultation with other Federal agencies, to NRCS State conservationists to clearly specify the factors and considerations involved in developing the requirements for program eligibility. The criteria will provide consideration of the elements specified in the Conference Manager's report cited above, including the cost-effectiveness of the application, the ability of producers to pay for such facilities without financial assistance, the significance of the natural resource concerns resulting from the operation, and the prevailing State, tribe or local implementation of environmental laws, such as the Clean Water Act. In considering this definition, priority emphasis will be placed on assisting family farmers and ranchers, especially small- and medium-scale producers, and not meatpackers, processors, and vertical integrators. Small- and medium-scale family farms and ranches that have contracts with meatpackers, processors, and vertical integrators would be eligible. A variable cost-share rate could be considered at the State level, so that limited resource farmers and small-scale operations would receive a higher Federal cost-shares.

The NRCS State conservationist's definitions must be approved by the Chief, who will consider the justification of the definition and consistency in the definitions, to the greatest extent possible, used between and among States.

All participants who receive cost-shares to install animal waste management facilities must follow an approved animal waste management plan in accordance with NRCS conservation practice standards, which may require the use of a nutrient management plan, including the satisfactory use, treatment, or disposal of animal wastes. When determining the number of livestock in the participant's operation for eligibility purposes, the total number of animals confined at all locations of the participant's livestock operation will be used, not just the animals at the site of the proposed animal waste management facility. The average annual number of livestock in the operation, for the 12-month period before making application, will be used for this calculation. This places an emphasis on the economic factors associated with the livestock enterprise, especially reflecting the ability to pay for the conservation practice. Also, guidance will be provided on using EQIP funds to cost share animal waste management facilities for expanding and new livestock operations. While such use of funds would be permitted, guidance will emphasize that NRCS State conservationists should place the highest priority on the most significant natural resource concerns and that they have the flexibility to place higher priority on assistance to existing livestock operations. Livestock operations that expand to the level contained in the State-defined definition of a large confined livestock operation would not be eligible for cost-

share assistance for the animal waste management facility. The Chief will report to the Secretary periodically on the implementation of this policy, especially on the impact that may be occurring to the environment and to the structure of livestock agriculture. The report, submitted to the Secretary every six months for the first two years the program is implemented, will be based on information received from the NRCS Regional and State conservationists, and from other sources.

CCC believes this option provides significant flexibility for State and local decision-makers, where the needs of the environment and the livestock operator are best determined, and thus best meets the intent of the 1996 Act. This method will provide the program with the maximum ability to resolve environmental problems in priority areas and other locations where the program is delivered. It also incorporates the consideration of a person's ability to pay, regardless of the size of the operation. This option considers prevailing State or local implementation of various Federal, State, and tribal environmental authorities and requirements, including the Clean Water Act and other water quality authorities. It will allow CCC to consider modern livestock operation characteristics, which vary depending on types of livestock, marketing strategies, geography, and State and local economic factors, from a State and local perspective.

Section 1466.8 Technical and Other Assistance Provided by Qualified Personnel Not Affiliated With USDA

USDA received 16 comments that express support for allowing the use of technical and other assistance from entities outside of USDA. Two comments suggest the use of planning grants as a means to obtain assistance from other entities and one comment suggests a finder's fee be available for any assistance provided for the identification of potential program participants. Six additional comments urge USDA to include specific mention of particular qualified personnel or agencies available to provide technical assistance, such as mention of tribal agencies, agriculture input retail dealers, biologists, and qualified individuals. *USDA believes flexibility for technical assistance will increase the utility of the program for addressing natural resource concerns. USDA does not have the authority to make planning grants or provide finder's fees. USDA utilized broad language in the proposed rule to increase the flexibility of the program and believes that mention of particular entities is unnecessary. No changes have been made in the final rule concerning these comments.*

USDA received fourteen comments that suggest the participant's cost for technical assistance from non-USDA sources be paid with EQIP funds. Four additional comments indicate USDA should reflect the reduced agency costs in overhead resulting from the use of non-USDA sources of technical assistance. One comment states EQIP funds should not be used for the technical assistance provided by non-USDA sources. Six comments request USDA provide funding for the services provided in EQIP by conservation districts and four comments simply request USDA explain in greater detail how it will contract to pay for technical assistance provided by non-USDA sources. *USDA encourages the use of non-USDA sources of technical assistance, including private sources, but does not agree that EQIP technical assistance funds should be provided to participants who chose to use technical assistance provided by non-USDA sources. Participants have the flexibility to use the services provided by private sources, NRCS, conservation districts, State and local government agencies, and other qualified natural resource professionals. Many of these sources of assistance provide the technical assistance using other forms of tax-payer support. USDA does not agree that conservation districts should be paid with EQIP funds for administrative or planning services provided as a member of the local work group. In those instances where NRCS is requested by a participant to provide technical assistance, and NRCS is unable to provide that technical assistance, NRCS has the ability to use qualified non-USDA personnel through contracts with private sources or through cooperative agreements with other Federal, State, or local government agencies as authorized in § 1466.6(b). No changes have been made in the final rule concerning these comments.*

The Department received 16 comments regarding the standards it will use to assess the quality of technical and other assistance provided by outside sources. The breakdown of these 16 comments is as follows: 2 comments expressly support NRCS oversight of the technical assistance provided by outside sources; 2 comments suggest the conservation district should assume that responsibility; 4 comments recommend Certified Crop Advisors should be authorized to submit field and whole farm nutrient and pest management plans for EQIP; 1 comment states ''certification, benchmark standards or other additional demonstrations of knowledge'' do not belong in USDA rules and procedures; 2 comments suggest the final rule provide greater clarity about any qualifications that NRCS will require; 3 comments suggest NRCS establish a certification process or conduct qualification workshops; and 1 comment states technically qualified organizations should be qualified as organizations eligible to provide technical assistance. *NRCS intends to hold personnel from non-USDA agencies and private sources of technical and other assistance to the same standards or criteria it expects from USDA employees. At this time, since adequate certification programs are available from other sources, NRCS does not intend to establish a certification process and generally will accept the certification provided to professional conservationists by other organizations. Qualified personnel from agencies and groups not affiliated with USDA will be expected to have knowledge of how the program works and the requirements of the program. NRCS may provide training to personnel from other agencies and groups about the program and its requirements either individually or in workshops. No changes have been made in the final rule concerning these comments.*

Section 1466.20 Application for Contracts and Selecting Offers From Producers

USDA received one comment which suggests that ''shall'' be replaced with ''may'' throughout this section. *USDA believes the agencies have sufficient discretion to administer EQIP in a flexible manner to meet varied resource needs, and, therefore, sees no need to replace the word ''shall'' with ''may'' in § 1466.20.*

USDA received six comments regarding the submission of applications. Of these six comments, one comment supports the ability to sign up at the USDA service center, three support the continuous sign-up process, one comment requests USDA clarify how often the agencies will rank applications, and one comment inquires when the continuous sign-up would commence. *USDA believes the announcement of sign-up periods, the timing, and frequency of application ranking is contingent on the specific logistical requirements of each approved priority area and significant statewide natural resource concern. It is imperative that enough flexibility be in place to address varying farming and ranching regimes throughout the*

country. No changes have been made in the final rule concerning these comments.

USDA received 13 comments regarding the application process. Of these 13 comments, 10 raise questions and concerns regarding any proposed ''bidding'' process, including whether there would be bidding. Two comments raise concern regarding the length of the application and ranking process and urge timely approval be given. One comment indicates a producer does not become a participant until the application has been approved, yet it is unclear at what time a producer assumes rights and obligations under a contract. *Section 1466.20(a) indicates that any producer with eligible land may submit an application for participation in the program. The Department expects to receive far more applications for participation than existing funding levels can accommodate. Therefore, the Department will select projects through a competitive process, though not necessarily a bidding process. Applications are ranked on a number of factors, cost being only one of the factors considered. Because the competitive process aims to achieve maximization of environmental benefits per dollar expended, an applicant can improve the attractiveness of the proposed project by electing to accept lower program payments than authorized or by developing a management system that increases the project's environmental benefits.*

It is not USDA's intention to create a process that will take an excessive amount of time from date of application to the commencement of work on a project. However, all practices and conservation plans are different; some practices require an extensive investment of time in planning, designing, and engineering a structural practice, e.g. animal waste management structure. NRCS may contract for technical services if the workload is such that timely approval is not otherwise possible. The producer is a participant and has legally enforceable rights and responsibilities under an EQIP contract when the contract is executed by the producer and the USDA. No changes have been made in the final rule concerning these comments.

USDA received three comments regarding the role of the State technical committee in the ranking process. Of the three comments, one comment supports the involvement of the State technical committee, one comment disagrees, and the third comment requests any advice provided by the State technical committee be available for public comment. *USDA intends to allow State technical committees to recommend to NRCS State conservationists guidelines for developing ranking criteria for evaluating applications that are consistent with the criteria set forth under § 1466.20. Local work groups will develop additional criteria within these statewide parameters to address local natural resource concerns. Guidelines developed at the state and local level will be available for public review and opportunities will be available for pubic input. No changes have been made in the final rule concerning these comments.*

USDA received five comments regarding the role of the local work groups in the development of ranking criteria. Of these five, two comments requests clarification regarding the actual role of the local work groups and three comments request local work groups apply ranking criteria in addition to developing the criteria. *USDA feels the current language adequately addresses the commenter's concerns. The local work groups and their members recommend ranking criteria but do not have a vote in the approval process. The FSA county committee, with assistance of the NRCS designated conservationist and the FSA county executive director, shall use the ranking criteria and grant final approval for a contract.*

USDA received 48 comments regarding the respective roles of the agencies in the ranking and application approval process. Of these 48 comments, 45 comments express concern that the FSA county committees were merely a rubber stamp and 3 comments recommend the county committee system be utilized greater in concert with the NRCS ranking system. *The administration of USDA conservation programs has moved beyond the traditional FSA committee system of approvals due to the implementation of the 1996 Act which folded the functions of the existing conservation programs into EQIP. USDA believes all of the agencies and committees with roles in the program have important responsibilities in line with their expertise, and the language in the proposed rule adequately defines the roles of the respective agencies. No changes have been made in the final rule concerning these comments.*

USDA received 14 comments regarding the ranking criteria for the selection of applications. Of these 14 comments, seven comments recommend particular factors that a ranking system should address. In particular, comments suggest including evaluating off-site and on-site benefits, credit for applicants who have installed practices under different programs, and applications that address several natural resource concerns receiving a higher ranking against those that address only one natural resource concern. Five comments discuss an environmental benefit index, including four comments which express support for the concept but caution against a national index, and one comment which did not support the concept. The two remaining comments ask how the agencies would determine cost and express the opinion that cost was an arbitrary factor to base acceptance upon. *USDA believes it is important to allow flexibility in the selection of ranking factors, both on the State and local level, to best address local natural resource needs, and does not intend to establish national level ranking factors. Ranking factors will vary between approved priority areas and significant statewide natural resource concerns. The cost of a conservation practice will be estimated by NRCS using knowledge of local practice costs collected and provided by FSA. National level direction will place emphasis on developing ranking criteria which presents the least cost to the program since the maximization of environmental benefits per dollar expended is an integral facet of the program and is clearly articulated in the statute. No changes have been made in the final rule concerning these comments.*

USDA received 26 comments regarding the impact the ranking criteria will have upon participation by tribal, minority, and limited resource farmers. Of these 26 comments, 19 comments specifically state the application and ranking process will discriminate against minority and limited resource farmers. A different comment recommends that potential discrimination could be avoided by assuring that limited resource farmers had a voice on the local work groups. One comment states the process was unduly burdensome upon tribal governments because of the requirement to list all lands under their control. Three comments raise concern that the emphasis upon cost could discourage limited resource farmers from participating because wealthier applicants would rank higher on that factor alone, regardless of which applicant has the more critical resource concern. *The statute mandates that USDA achieve the greatest environmental benefit per federal dollar expended. This does not translate into a simple calculation that applicants*

who contribute more towards the cost of a practice will rank higher. USDA focuses upon the environmental benefits achieved in the most cost-efficient manner. An applicant can improve the cost-efficiency of the proposed project in several ways, including filing a joint application with similarly situated individuals, providing like-kind services, and focusing upon an appropriately scaled solution to any given concern. USDA intends to provide guidance in program guidance documents that stresses the need to apply all program elements and activities in a manner that does not discriminate against any farmer or rancher who are potential participants in the program. No changes have been made in the final rule concerning these comments.

One comment states producers who do not have bank accounts would be excluded from EQIP participation due to the electronic funds deposit policy of the 1996 Act and alternative methods of issuing checks should be provided as a options. *In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), payments made in Federal programs will be disbursed by electronic funds transfer (EFT). Recipients of Federal payments must provide financial institution information necessary to receive payment via EFT. Waiver of the EFT requirement may be granted by FSA through December 31, 1998, if the recipient provides a written certification that the recipient does not have an account with a financial institution or an authorized payment agent. No change was made in the final rule concerning this comment.*

Section 1466.21 Contract Requirements

Of the various contract requirements outlined in § 1466.21, USDA received the greatest number of comments regarding the statutory requirement that EQIP contracts be for not less than five years and not more than 10 years. Of the 32 comments received on this subject, six comments express support for the 5 to 10 year contract duration. One comment suggests no contract at all should be required for cost-share assistance. Three comments recommend a specific shorter duration, such as 3–10 years or on an emergency basis. Twenty-two comments state producers would not be receptive to 5–10 year contracts based on the assumption that long-term contracts are cumbersome, five-year minimum contracts are unnecessary to address single natural resource concerns, and the duration of contracts are detrimental to small-scale and limited resource farmers. *The 1996 Act requires that payments be made to participants through an EQIP contract, and the contracts be a minimum of 5 years and a maximum of 10 years. The Department cannot modify these requirements. EQIP did not combine the functions of emergency conservation programs from either FSA or NRCS into its programs. The emergency conservation program and the emergency watersheds program will likely continue in some form to address these emergency situations. No changes have been made in the final rule concerning these comments.*

USDA received eight comments that state EQIP plans should be limited to those practices being implemented for which cost-share is received. USDA believes some conservation plans do require implementation of non-cost-shared conservation practices or operations in order to ensure that cost-shared practices are functional and accomplishing the plan's stated goals in addressing the identified natural resource concerns. No changes have been made in the final rule concerning these comments.

One comment states controlling noxious weeds should be added to the list of contract requirements. *Control of noxious weeds is frequently a requirement of State or local laws and those laws can be enforced in the normal manner. No changes have been made in the final rule concerning this comment.*

USDA received 18 comments regarding the role of FSA county committees, seventeen of which suggest the rule explicitly state that FSA county committees may either approve or disapprove contracts. The remaining comment recommends county offices should have authority to modify contracts in order to transfer money from one contract to another to balance contract cost overruns with shortfalls on other contracts. *USDA feels the current language is sufficient and in accordance with the reorganization decisions made within the Department in the last two years. Program guidance will specify how unused funds may be used. No changes have been made in the final rule concerning these comments.*

USDA received three comments regarding the limitation of one EQIP contract at any one time for each tract of agricultural land. Of these, one comment proposes allowing the local work group flexibility to define areas of natural resource concerns, one comment proposes all properties owned by a single person be counted as one, and the third comment expresses the concern that this requirement would create a paperwork nightmare. *USDA believes the current FSA method used to classify farm and tracts should be used to monitor where EQIP contractual activities are undertaken as it is with other USDA conservation programs. FSA has an existing database that will enable this requirement to be easily tracked, thus avoiding a paperwork burden. No changes have been made in the final rule concerning these comments.*

One comment requests CCC to commit the funds up-front that will be needed for a 5-year contract and that such funds would be unavailable for other purposes. *When contracts are agreed to by CCC, payments become an obligation of the CCC for the full contract period within the limits of the CCC's borrowing authority which is fully expected to be sufficient to cover all obligations. There is no provision in the law specifying a special priority for EQIP, or other claims, over other legitimate claims on CCC funds. Accordingly, it was determined that the portion of this comment to prioritize EQIP over other uses should not be adopted. No changes have been made in the final rule concerning these comments.*

USDA received five comments requesting § 1466.21(c) be revised to allow for a producer to complete the first practice of the contract to be completed within 24 to 36 months, instead of 12 months. *USDA believes it is in the best interest of the program to obtain tangible conservation benefits as soon as possible during contract periods, and to be assured the participant intends to comply with the contract. The best way to achieve this is to actually install or implement conservation practices in the beginning of the contract period. No changes have been made in the final rule concerning these comments.*

Section 1466.22 Conservation Practice Operation and Maintenance

A commenter inquires if the lifespan of a conservation practice is greater than 10 years, how will USDA ensure the participant will continue to operate and maintain the practice in accordance with this section. Another comment states this section should be more explanatory in regards to participant accountability and follow-up of EQIP contracts to ensure that taxpayer resources are accomplishing the objectives in the contracts. *Section 1466.22 has been revised in the final rule to state that CCC may periodically inspect the conservation practices with life spans that exceed the contract*

period to ensure that operation and maintenance is occurring.

One commenter requests ''unless a catastrophic event occurs'' be added to the end of the second sentence in § 1466.22. *Paragraph 1466.25(b)(3) of the proposed rule enables CCC to give consideration to hardships that prevent the participant from complying with the contract terms that are beyond the participant's control. USDA believe this adequately addresses the comment and no change has been made to the final rule concerning this comment.*

Section 1466.23 Cost-Share and Incentive Payments

Two comments stress financial incentives are an important part in encouraging farmers to adopt practices that work best on their land which will provide off-site environmental benefits. Another comment states incentives need to provide incentives for all stakeholders in a watershed, not just the ones involved in traditional agricultural occupations. Seven comments indicate support of EQIP payments to livestock producers and increasing the amount of cost-share funds a participant can receive in a multi-year contract. Four comments are critical of EQIP concluding that small and family farmers and ranchers will not be able to provide funds for their portion of a multi-year contract, profitability for the family farmer is overlooked because there is no way they can possibly comply with various environmental regulations even with cost-share programs and a proposal to eliminate cost-sharing for animal waste management facilities by placing the responsibility for clean up of these problems with the State and local government. One commenter states many tribal farmers are limited resource farmers that should receive at least 75 percent cost-share and also have available low-cost conservation practice alternatives. *USDA agrees that financial incentives encourage farmers to adopt conservation practices that result in both on-and off-site benefits. The flexibility of EQIP allows for the establishment of rates that best address local situations. Special rates can be established to ensure adoption of conservation practices.*

Two comments suggest providing incentives to participants who participate in educational programs. *The Department will offer information, education, and training at no cost to farmers and ranchers to aid in implementing their conservation plan. Paragraph 1466.5(h) has been added to the final rule concerning this educational assistance.*

One comment suggests low or no-interest loans should be made instead of payments. *The 1996 Act authorizes cost-share and incentive payments, not loans, to program participants. Other programs with these options are available and information about them can be obtained at local USDA service centers. No change has been made to the final rule concerning these comments.*

Two comments encourage the use of EQIP payments with State cost-share programs if available. *The Department believes a valuable way to maximize environmental benefits per dollar expended is to encourage co-cost-share arrangements with other State and local, public and private, funding sources. The proposed rule contained several references to considering support provided by State and local programs when designating priority areas and national conservation priority areas. This encouragement also will be incorporated in the program guidance documents. No change has been made to the final rule concerning these comments.*

Two comments urge USDA to clarify in the final rule that the 25 percent cost-share simply must be a non-federal match, which could include assistance by a non-governmental organization (NGO) or a State agency. *USDA will provide administrative policy in the program guidance documents concerning situations where special interest groups or a State agency contributes to the cost of a practice. The final rule has been amended to indicate that the Federal share of cost-share payments will be reduced to the extent total financial contributions from all public and NGO sources exceed 100 percent.*

Several comments address payment rates. One comment suggests the payment rates used in prior conservation programs be re-evaluated in regard to the policies being established for EQIP. Another commenter encourages the use of a variable-rate incentive program for EQIP. Another commenter states that, to be advantageous for a participant, a realistic range of $1–4 per acre, rather than 25–50 cents per acre should be used. *The Department will estimate the local costs of conservation practices and inform producers of the maximum payments that will be allowed with EQIP. Rates used in a locale in a prior conservation program should be re-evaluated and adjusted, as needed, to reflect current conditions and needs. Variable rates may be selected for use in a given locale. No change has been made to the final rule concerning these comments.*

Forty-three comments were received which request the following practices be eligible for cost-share or incentive payments: riparian zone protection, fencing to restrict livestock from sensitive wildlife habitat areas, vegetated ditch banks, chemical free insect control, recycling, waste utilization, fire and grazing management, precision agriculture or variable technology services, system soil testing, terraces, waste oil recycling, controlled drainage, tile set backs, rinse pads, solids testing, capping abandoned wells, shelterbelts, split application of nutrients, buffer zones around ponds or lakes for citrus enterprises, on-farm containment dikes, fuel storage management, and permeable mates for tree planting, efficient irrigation practices, irrigation wheel lines, and conservation tillage including no-till. *USDA believes these are examples of some practices which may be eligible in EQIP when used for natural resource conservation purposes. To be eligible, the practice must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve natural resources or to provide for environmental enhancement. Conservation practices must meet NRCS standards and specifications set forth in the FOTG. No change has been made in the final rule concerning the eligibility of conservation practices.*

One comment suggests that urbanization of agricultural land causes environmental problems that should be addressed with EQIP. *The statute does not give the Department the authority to use EQIP to address problems caused by the conversion of agricultural land to urban uses.*

One commenter favors conservation tillage and suggests grants be given to conservation districts to lease or buy equipment that could be rented to producers at a discounted rate to encourage producers to try the no-till method of farming. Another commenter favors program payments for research and development. *The 1996 Act does not authorize the Secretary to use EQIP funds for grants, nor for research and development. No change has been made to the final rule concerning these comments. However, paragraph 1466.7(a)(3) of the final rule describes how EQIP may be used to provide financial assistance where new technologies or conservation practices provide a high potential for maximizing environmental benefits per dollar expended.*

One commenter states the language in paragraph 1466.23(a)(2) concerning incentive payments ''at a rate necessary to encourage'' should take into consideration the total conservation plan and the number of natural resource concerns or practices as a total package when developing the rate structure. *The 1996 Act authorized the Secretary to make incentive payments in an amount and at a rate to be necessary to encourage a producer to perform one or more land management practices. The Department will provide guidance concerning incentive payments in program guidance documents. No change has been made to the final rule concerning this comment.*

A commenter states EQIP would be more effective if incentives were more broadly applied to farm management rather than targeting cost-share for manure structures. Another comment expresses no one hog producer should be allowed to receive more than $10,000 in cost-share. *The Department agrees incentives for management practices are effective and intends on encouraging the use of incentive payments of land management practices, which generally maximize environmental benefits per dollar expended when compared to many structural conservation practices. The Department will provide guidance concerning incentive payments in program guidance documents. Cost-share and incentive limits for conservation practices will be determined at the State or local level. No change has been made to the final rule concerning these comments.*

Four commenters state there is a need to clarify that cost-share payments are related to the installation of both structural and vegetative practices, that incentive payments are related to the development and/or maintenance of land management practices. *As the commenters suggest, cost-share payments are for establishing structural or vegetative conservation practices, and incentive payments are to encourage producers to adopt land management practices. USDA has clarified and made the distinction between cost-share and incentive payments in § 1466.3 of the final rule and has added paragraph 1466.23(a)(4) in the final rule stating that both cost-share and incentive payments may be received under the same contract.*

Two commenters state FSA county committees should also help establish the cost-share and incentive payment rates by practice within the maximum payment limitations set by law and approve contracts. *FSA State and county committees will help to establish payment rates by their participation on State technical committees or local work groups which will consult with NRCS when setting payment limits. State and county FSA offices will continue to gather supporting data for determining cost-share rates and for establishing cost-share levels with limitations.*

A recommendation by one commenter states that paragraph 1466.23(a)(3)(i) should be revised to add the words ''and the State technical committee'' after ''local work group.'' *USDA agrees with the comment and has included the revision in the final rule.*

A proposal by a commenter states that the words ''total amount'' in paragraph 1466.23(b) be deleted and the words ''Federal share'' be inserted. *The language used in the proposed rule is consistent with the 1996 Act. In its entirety, the paragraph reads ''Except as provided in paragraph (c) of this section, the total amount of cost-share and incentive payments paid to a person under this part may not exceed: * * * '' (Emphasis added.) The Department believes the phrase ''under this part'' provides the clarity being suggested by the comment and has made no change in the final rule concerning this comment.*

Two comments indicate the payment limitations are not workable and limiting a producer to $10,000 per year will delay the installation of some practices. *USDA disagrees as paragraph 1466.23(c)(3)(i) allows for the $10,000 yearly limit to be exceeded on a case-by-case basis. No change was made in the final rule concerning these comments.*

A comment states that it is unclear whether the $50,000 limitation is a total project limit per landowner or a cap on Federal participation per project. The commenter suggests that it be the cap on federal participation per project, thus encouraging participants to seek the additional funding from other non-Federal sources for the more expensive but cost effective projects, and resulting in more cost-effective projects from the Federal perspective. Three additional comments state there should be waiver provisions for those comprehensive planning efforts to exceed the $50,000 payment limitation in order that the program can realize maximization of environmental benefits. *The 1996 Act established the $50,000 limit on a multi-year contract. This limit refers to the maximum program payments that may be made on any multi-year contract, not to a cap on the total cost of a project. Contracts are commonly for one or more conservation practices to address the natural resource concerns on a farm or ranch unit of concern. The limit will have the effect of placing a cap on the program payments made on a ''project.'' However, a person may enter more than one contract, thus having the ability to receive more that $50,000 from EQIP. The proposed rule establishes a limit of one contract at any one time for each tract as identified with a FSA tract number. A participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous contract on the same tract. No change was made in the final rule concerning this comment.*

Two comments favor the $50,000 contract limitation with a suggestion that there be a non-regulatory, incentive-based approach for conservation of wildlife and wildlife habitat. *The Department has developed EQIP as a voluntary natural resource conservation program that will provide financial incentives for concerns such as wildlife and wildlife habitat. No change was made in the final rule concerning these comments.*

Another comment states that $50,000 will only pay for one-third to one-half of the investment cost for a livestock animal waste facility. *The 1996 Act limits the cost-share payments for structural practices to not more than 75 percent of the projected cost of the practice. The 1996 Act does not provide a guarantee that the program payment will be 75 percent of the projected cost of the practice. No change was made in the final rule concerning this comment.*

A statement from a commenter expresses that the proposed rule does not clearly define who is eligible for EQIP funds. *The proposed rule does provide eligibility rules which will apply to define who is eligible for EQIP funds. No change was made in the final rule concerning this comment.*

Six comments concern payment limitations and how ''person'' is defined for EQIP. One comment suggests the use of social security numbers rather than allowing producers to receive payments from 3 entities. One comment recommends USDA make sure all sites owned by a single person are counted as one entity. Three of the comments state that any recipient of EQIP funds should be actively engaged in farming. One comment states that cash rent tenants should be exempt from payment limitations and one commenter states that cash rent tenants should not be exempt from payment limitations. One commenter indicates it is not surprising that the rule proposes to use the same ''loophole-laden'' payment limitation and person definitions used by FSA for commodity programs and CRP. However, the commenter expresses outrage that the rule would go beyond

those ''weak standards'' and actually delete major payment limitation provisions from applicability to EQIP. *USDA believes that it is important to have EQIP payment limitation provisions consistent with other major agricultural programs to reduce paperwork burdens on the applicant and the Department, and to reduce confusion on the part of the producer and USDA employees that different program provisions would create. The major provisions in 7 CFR Part 1400 being applied for EQIP are consistent with the regulations of the Conservation Reserve Program (CRP) and with those regulations for producers receiving production flexibility contract payments. Moreover, CCC feels that program administration will be eased by the fact that many producers are aware of these provisions, have paperwork already on file that will suffice for EQIP, and are accustomed with dealing with reporting and filing requirements. CCC has periodically revised the provisions in 7 CFR Part 1400 to close loopholes when they are discovered and will continue to do so in the future. CCC will not apply the provisions in 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 because those provisions were developed to limit payments to persons without regard to environmental or natural resource conditions. EQIP is primarily concerned with addressing significant environmental and natural resource concerns and CCC believes the stated provisions would limit its ability to address those concerns. No change was made in the final rule concerning these comments.*

Six comments request paragraph 1466.23(c)(1) be revised to indicate that States, political subdivisions, and entities thereof, be permitted to receive payments. One comment states this paragraph excludes school land leased to farmers and state-enabled public corporations, such as drainage or irrigation districts, from receiving payment; the commenter states these entities should be eligible. Another comment states payments should be made to these entities only if they are directly and financially involved with an EQIP project established around a weed management area as defined in the guidelines for coordinated management of noxious weeds in the Greater Yellowstone area. *CCC believes that excluding States, political subdivisions, and agencies thereof, from receiving payments will make more funding available for private producers that generally do not have the financial resources that governmental entities have. Paragraph 1466.4(d)(2) of the proposed rule enables publicly owned land to be eligible if the land is under private control for the contract period and is included in the participant's operating unit; the conservation practices will contribute to an improvement in the identified natural resource concerns; and the participant has written authorization from the government landowner to apply the conservation practices. CCC believes this provision meets the intent of several of the comments. No change was made in the final rule concerning these comments.*

Three commenters express support for the language in paragraph 1466.23(c)(3)(i) which authorizes the NRCS State conservationist to exceed the $10,000 annual limitation when it is necessary to meet the conservation objectives of the participant's plan. One of the above commenters urges broad interpretation of the criteria necessary to be met in order to exceed the limitation to provide cost-effective salinity control. Two other comments state the authority to exceed the annual limitation of $10,000 should be given to the local level for their determination. Another comment states it is important that authorization of larger payments in a shorter time period should be given as an option to the State conservationist as accelerated disbursement of funds within one to two years is needed to provide the most cost-effective assistance to participants. *CCC believes that these annual payment limitation waivers are best made on a case-by-case basis by the State conservationist considering the input and recommendations received from the local level. CCC believes the language in the proposed rule provides for sufficient latitude and flexibility that waivers may be granted, when justified, that will enable payments up to the contract limits. A provision of the EQIP contract is to provide the most cost-effective conservation assistance. No change was made in the final rule. Program guidance will be developed concerning justification of the annual limitation waiver.*

Three commenters state support for the proposed rule provision for a payment limit exemption for tribal ventures, one noting that an Indian tribe may be the beneficial owner of hundreds of thousands of acres of agricultural lands held in trust status by the United States. The vast majority of tribal agricultural lands could be excluded from financial assistance programs unless tribes are exempted from funding ceilings. Another comment suggests paragraph 1466.23(c)(3)(iii) should specify that the payment limitations do not apply to contracts on tribal land or BIA allotted lands. *The Department must adhere to the EQIP payment limitation as set by statute. To accommodate the unique situation of tribal, allotted, and Indian trust lands, the regulation provides that a tribal venture can receive payments in excess of the limitations if an official of the Bureau of Indian Affairs and/or a tribal official can certify that no one person, as defined in 7 CFR Part 1400, will receive in excess of the limitations.*

One comment supports the exception to the payment limitation included in the proposed rule for a producer with a current EQIP contract who inherits land subject to another EQIP contract. *No change was made in the final rule concerning the comment.*

A recommendation by a commenter states a producer should be eligible for EQIP payments during the last 2 years of a CRP contract to allow the CRP participant to implement a conservation practice in advance of returning the CRP land to production, thereby maintaining the maximum environmental benefit achieved under the CRP contract. *The 1996 Act states that a producer shall not be eligible for cost-share payments for structural practices if the producer receives cost-share payments or other benefits for the same land under CRP or the Wetlands Reserve Program (WRP). However, there is nothing that precludes a producer from beginning the planning and paperwork process for EQIP while the land is still under CRP or WRP contract. The EQIP contract would not be approved and considered binding until such time as the land was no longer covered by either CRP or WRP contractual authority. No change was made in the final rule concerning the comment.*

Three comments recommend EQIP participants should be given the option of being paid as the practice is being implemented, with as much as one-half of the payment being made following the technical certification that the project has been completed. *The program guidance documents will detail procedures for making partial payments to participants. Partial payments for completion of part of a conservation practice may be made if the participant will complete the entire practice, with or without EQIP assistance, within the time prescribed by the FSA county committee, with NRCS concurrence. No change was made in the final rule concerning these comments.*

One hundred and four comments express that paragraph 1466.23(e) needs to be changed to provide payments as soon as the conservation practice is complete and technically certified. Two of the commenters ask whether the deferred payment is referring to the calendar year or the fiscal year. *Paragraph 1466.23(e) of the proposed rule indicates that payments will not be made until the fiscal year following the fiscal year in which the contract was entered into. For illustration purposes, a contract entered into from October 1, 1996 through September 30, 1997 cannot have payments made on completed practices until after October 1, 1997, the beginning of the next fiscal year. Except for payments earned during the first fiscal year of the contract, all other payments will be made after the practice is certified to be in accordance with technical specifications. This provision is based on the 1996 Act and the Department cannot change this provision, thus no change was made in the final rule concerning these comments.*

Section 1466.24 Contract Modifications and Transfers of Land

Four comments concern contract modifications. One comment states this section must provide provisions for reasonable modification of contracts. A second comment indicates concern that a producer will not have enough flexibility in a long-term contract in order to be permitted to modify a contract several years into its implementation. Another comment proposes the local NRCS district conservationist should be allowed to modify the contract if a planned practice is not practical. One comment suggests the local work group should be able to approve or deny contract modifications, in accordance with NRCS requirements, because requiring CCC approval of every modification may result in unnecessary administrative delays. *The contract modification provisions for EQIP are similar to those in other USDA conservation programs, including the former programs which EQIP replaces. The program guidance documents will provide procedural guidance for modifying contracts, and will have the flexibility that will enable a participant to apply to modify a contract several years into its implementation as long as the conservation plan is revised in accordance with NRCS requirements and approved by the conservation district. Local work groups are advisory bodies and cannot approve/disapprove contracts or contract modifications. Approval/disapproval of contract modifications will be done in the same manner as contracts; FSA and NRCS will serve as representatives of CCC at the local level. It is not anticipated that requests for contract modifications will result in unnecessary delays. No change was made in the final rule concerning these comments.*

One comment states paragraph 1466.24(c) should have the words ''loses control of the land'' removed. The commenter believes that if a producer loses control through bankruptcy, it would be unfair to require repayment of cost-share funds. *CCC disagrees with the comment. If a participant loses control of the land, through bankruptcy or other manner, and cannot complete the contract, the environmental benefits that had been expected using program assistance may not be achieved. No change was made in the final rule concerning this comment.*

Section 1466.25 Contract Violations and Termination

Five comments suggest the local conservation district should be involved in the consultation process referred to in § 1466.25. *CCC agrees with this suggestion because of the role conservation districts have on the local work group and in approving conservation plans used as the basis for program contracts. The final rule has been amended to enable NRCS to consult with the local conservation district.*

Three comments concern the time a participant should be given if they are found to be violating the terms of the contract. One comment recommends that ''reasonable time'', used in paragraph 1466.25(a)(1), should be defined in § 1466.3 Definitions. Another comment recommends all violations be corrected as soon as possible with a maximum of one year to get back into compliance with the terms of the EQIP contract. Another comment suggests a waiver process be provided for those participants who cannot meet the time requirements of an EQIP plan. *CCC does not agree that the term ''reasonable time'' needs to be defined in regulation, nor that a maximum of one year should be regulated. Establishing a specific amount of time does not permit flexibility for the implementation of locally guided conservation measures. Depending on the circumstances of the situation, a reasonable time in one instance may be unreasonable in another instance. The FSA county committee, in consultation with NRCS and the local conservation district, are in the best position to determine what is reasonable. The program guidance documents being developed will indicate that, generally, a participant should be given one year, or some other reasonable time, to correct the violation and comply with the terms of the contract. No change was made in the final rule concerning these comments.*

One comment suggests language should be added to protect producers from being considered to be in noncompliance if problems are discovered during a technical assistance visit by NRCS, similar to provisions relating to highly erodible land compliance. *CCC does not agree with this suggestion since EQIP is entirely a voluntary program. Program participants voluntarily request program assistance to implement conservation practices according to a conservation plan and schedule that the producer develops. CCC believes that § 1466.25 of the proposed rule provides sufficient flexibility to enable a participant who is found to be in violation of a contract to again comply with the contract and to achieve the expected environmental benefits. No change was made in the final rule concerning this comment.*

Several comments concern specific, hypothetical examples of potential violations of contracts. One comment asks if soil, water or other natural resources are not protected in a cost-effective manner, will the participant be subject to breach of contract. Another example relates to a participant who appeals a determination that the goals and objectives were not achieved, will payments be withheld pending a review of the appeal. *All applicants are required to submit a conservation plan that is acceptable to NRCS and approved by the conservation district. NRCS will likely find the plan unacceptable if it is not cost-effective or does not achieve the goal and objectives. Therefore, the applicant will need to revise the plan to make it acceptable. Once a plan is acceptable and a participant has a contract, the participant will be in compliance with the contract as long as the conservation practices are being established, operated, and maintained in accordance with the contract. No change was made in the final rule concerning these comments.*

One comment states the penalties and/or repayment obligations for a participant who is in violation of a contract should be included in the rule. Another comment states violators of compliance ''must'' be penalized, not ''may'' be as the proposed rule states, otherwise EQIP will lose its credibility and effectiveness. A third comment states the penalties for noncompliance should be proportional to the degree of violation. *CCC believes the proposed*

rule language in paragraphs 1466.25(b)(1) and (2) satisfactorily provides for the assessment of repayment obligations and liquidated damages, and provides for flexibility in determining the amount of repayment or liquidated damages, considering the degree of the violation. No change was made in the final rule concerning these comments.

Four comments concern good faith and hardship considerations. One comment states no penalty should be assessed for conservation practices already completed in a contract if a good faith effort can be determined. Two other comments express an opposite point of view and request the good faith and hardship clause should be eliminated. These commenters suggest if an applicant is unable to carry out a conservation plan, that should be determined before a contract is commenced and participation in EQIP should be denied. One comment states that hardship criteria should be provided in this section. *USDA has knowledge and experience from administering other conservation programs that there are many factors which can alter a participant's ability to implement a long-term contract that are not known at the time of application. Factors such as natural disasters, economic hardship, or a producer's ill-health, all of which may be beyond the participant's control, may necessitate the need to determine good faith efforts in order to make appropriate contract adjustments. The criteria for determining hardship and its applicability will be provided in the program guidance documents. Paragraph 1466.25(b)(3) provides sufficient latitude in regard to determining good faith effort for all contract decisions. No change was made in the final rule concerning these comments.*

One comment states there should be an ''escape clause'' for a participant to withdraw from a contract for reasons beyond their control. *CCC feels that the language in paragraph 1466.25(b)(4) of the proposed rule is adequate to enable a participant to voluntarily terminate a contract if CCC agrees. No change was made in the final rule concerning this comment.*

Section 1466.32 Access to Operating Unit

A commenter asks if NRCS will need access to the farm to obtain the necessary resources inventory information or will the property owner be permitted to bring that information to the NRCS office. The commenter has the impression NRCS will collect data for the whole farm and is opposed to this approach. *The final rule provides that a participant shall develop and submit a conservation plan for the farm or ranch unit of concern. An inventory of natural resource conditions is a component of the conservation plan. The participant may use technical assistance from NRCS or other government or private agribusiness sector qualified professionals to develop the conservation plan. If NRCS provides the technical assistance, it will inventory the natural resources only to the extent it is needed to determine the natural resource concerns and their causes for the farm or ranch unit of concern. If the producer requests a whole farm or ranch assessment, NRCS will collect the resource inventory information for the entire farm or ranch. NRCS may need to have access to the farm or ranch to determine the acceptability of the conservation plan submitted by a participant. The final rule clarifies in paragraph 1466.21(b)(3)(iv) that, in addition to access, the producer is required to supply information needed to determine compliance with the program.*

One comment asks who will be considered an authorized CCC representative for the purposes of having access to an operating unit or tract. *NRCS, FSA, and the FSA county committee will serve as the authorized representatives of CCC at the local level for the purposes of this section. No change was made in the final rule concerning this comment.*

Two comments concern the notification of the participant prior to gaining access to a farm or ranch. One comment states there is no reason for an inspection without the participant first being notified, therefore the language ''make a reasonable effort'' should be removed. Another comment suggests new language for this section, stating ''a participant must be notified 30 days prior to inspection is mandatory by CCC.'' *CCC believes there are numerous cases where a participant may be absent from the property for a lengthy period of time, or the participant is an absentee landowner or tenant who may not be easily contacted. In order to conduct its business in a timely manner in these cases, USDA believes that CCC should make a reasonable effort to contact the participant prior to accessing the property to enable the participant to attend at the same time. The program guidance documents will stipulate that the CCC representatives must document in the participant's file the efforts made to notify the participant before accessing the operating unit. It will be suggested in the guidance that the CCC representative begin efforts to contact the participant no later than 15 days before making the planned visit. No change was made in the final rule concerning these comments.*

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, Conservation, Natural resources, Water resources, Wetlands, Payment rates.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1466 to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 Program requirements.
1466.5 Priority areas and significant statewide natural resource concerns.
1466.6 Conservation plan.
1466.7 Conservation practices.
1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share and incentive payments.
1466.24 Contract modifications and transfers of land.
1466.25 Contract violations and termination.

Subpart C—General Administration

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of CCC.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or device.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839aa–8.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (CCC) provides technical, educational, and financial assistance to eligible farmers and ranchers 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.

§ 1466.2 Administration.

(a) Administration of EQIP is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

(1) Provide overall program management and implementation leadership for EQIP;

(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; and

(6) Make funding decisions and determine allocations of program funds.

(c) FSA shall:

(1) Be responsible for the administrative processes and procedures for applications, contracting, and financial matters, including allocation and program accounting; and

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

(d) NRCS and FSA shall concur in establishing policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

(f) CCC may enter into cooperative agreements with other Federal or State agencies, Indian tribes, conservation districts, units of local government, and public and private not for profit organizations to assist CCC with implementation of this part.

§ 1466.3 Definitions.

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

Administrator means the Administrator of the FSA, United States Department of Agriculture (USDA), or designee.

Agricultural land means cropland, rangeland, 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 EQIP. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, USDA, or designee.

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 post-harvest residues within the confined area in the normal growing season over any portion of the confinement facility.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

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 the 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.

Cost-share payment means the monetary or financial assistance from CCC 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. In the case of a priority area or other area that crosses State borders, the Chief or the Chief's designee will designate the NRCS official responsible for administration of EQIP in the priority area.

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, as amended, or designee.

Farm Service Agency State committee means a committee in a State or the Caribbean Area (Puerto Rico and the Virgin Islands) appointed by the Secretary in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

Field office technical guide 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 the local area for which it is prepared.

Incentive payment means the monetary or financial assistance from CCC 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.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for a Indian or tribal beneficiary, or

(2) A Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

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, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

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, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to EQIP implementation.

National conservation priority area means a watershed, multi-state area, or region of specific environmental sensitivity designated by the Chief.

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 an EQIP 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.

Regional conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a NRCS region.

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.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State executive director means the FSA employee authorized to direct and supervise FSA activities in a State or the Caribbean Area (Puerto Rico and the Virgin Islands).

State technical committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

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, terraces, grassed waterways, tailwater pits, livestock water developments, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide 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.

§ 1466.4 Program requirements.

(a) Program participation is voluntary. The participant, in cooperation with the local conservation district, develops a conservation plan for the farm or ranching unit of concern. The participant's conservation plan serves as the basis for the EQIP contract. CCC 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 Chief determines the funds available to NRCS for technical assistance according to the purpose and projected cost for which the technical assistance is provided by NRCS or designee in a fiscal year. The Chief 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 by the Chief. Funding shall not exceed the projected cost to NRCS of the technical assistance provided in a fiscal year.

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

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the

Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC 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 NRCS, is approved by the conservation district, and is in compliance with the terms and conditions of the program;

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable; and

(5) Supply information as required by CCC to determine eligibility for the program.

(d) Land used as cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced, including agricultural land that 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 EQIP. Additionally, land may only be considered for enrollment in EQIP if NRCS determines that the land is:

(1) Privately owned land;

(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 CCC with written authorization from the government landowner to apply the conservation practices; or

(3) Tribal, allotted, or Indian trust land.

(e) Fifty percent of available EQIP funds will be targeted to livestock-related natural resource concerns, including concerns on grazing lands and other lands directly attributable to livestock, measured at the national level.

§ 1466.5 Priority areas and significant statewide natural resource concerns.

(a)(1) Consistent with maximizing the overall environmental benefits per dollar expended by the program, NRCS may:

(i) Designate a watershed, an area, or a region of special environmental sensitivity or having significant soil, water, or 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;

(ii) Designate national conservation priority areas where the nature or scope of a natural resource concern necessitates greater coordination of efforts across boundaries; and

(iii) Identify significant statewide natural resource concerns outside a priority area.

(2) In addition to other factors identified in this section, priority areas, national conservation priority areas, and significant statewide natural resource concerns shall emphasize off-site benefits to the environment and coordination with other Federal and non-Federal conservation programs, including the Conservation Reserve Program and the Wetlands Reserve Program.

(b) CCC may approve technical, educational, and financial assistance under this part to participants with significant statewide natural resource concerns outside a priority area.

(c) To be considered for approval of a priority area, a Federal, State, or local government agency, Indian tribe, or a private group or entity 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 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 Federal 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, Indian tribe, and local levels, both public and private, to assist with the areawide activities;

(5) The technical, educational, and financial assistance needed from EQIP 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.

(d) The NRCS State conservationist, in consultation with the State technical committee and based on recommendations of local work groups, will approve the designation of a priority areas and make funding recommendations to the Chief. NRCS will evaluate proposals for priority area designations according to natural resource and environmental factors as identified in paragraph (d)(1) of this section, 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) 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) Environmental sensitivity of the land, such as wetlands and riparian areas;

(vii) Quality and intended use of the land;

(viii) 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; or

(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) NRCS will consider the following factors in its allocation of funds:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing Federal, State, tribal, and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors the NRCS determines will result in maximization of environmental benefits per dollar expended.

(e) A NRCS State conservationist, in consultation with a 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.

(f)(1) The Chief may designate national conservation priority areas using the identified national program objectives and criteria. The Chief may receive nominations from Federal, State, or local government agencies, Indian tribes, or private groups or entities, and may consult with other Federal agencies in selecting national conservation priority areas. Consistent with maximizing the overall environmental benefits per dollar expended by the program, the Chief may designate national conservation priority areas under this part to provide technical assistance, cost-share payments, incentive payments, and education for producers to comply with nonpoint source pollution requirements, other Federal, State, tribal or local environmental laws, or to meet other conservation needs.

(2) NRCS will consider the following factors in deciding whether to designate a national conservation priority area in which program assistance will be provided:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing State and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors that will assist CCC in maximizing the overall environmental benefit per dollar expended under this part.

(g) NRCS will establish program outreach activities at the national, State, and local levels in order to ensure that producers whose land has environmental problems and natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian tribes, Alaska natives, and Pacific Islanders.

(h) NRCS State conservationists shall develop an education plan that describes the educational assistance that will be provided to enhance program participant's knowledge about conservation opportunities, will aid in implementing their conservation plan, and enhance environmental benefits that will be realized through implementation of the program. In the development of the education plan, NRCS will design a coordinated approach, including national, State, and local components depending on the similar or unique education needs identified. NRCS will encourage cooperation among education providers, such as the Extension system, conservation districts, State agencies, and other public and private education providers, as well as the use of existing educational resources, material, or programs that deal with natural resource related issues.

(i) The Chief, with FSA concurrence, will make funding decisions for national conservation priority areas, State-approved priority areas, and significant statewide natural resource concerns outside a funded priority area.

(1) After review of funding requests, the Chief may base funding decisions on an allocation process which considers:

(i) The significance of the environmental and natural resources conditions;

(ii) Factors used and considered in accordance with paragraphs (d) and (f) of this section;

(iii) The need to maximize environmental benefits per dollar expended;

(iv) The capability of the partners involved in the proposal to provide flexible technical, educational, and financial assistance;

(v) The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of part 12 of this title and Federal, State, and tribal environmental laws;

(vi) The opportunity for encouraging environmental enhancement;

(vii) The anticipated or proven performance of the partners involved in the proposal in delivering the program; and

(viii) Other relevant information to meet the purposes of the program as found in this part.

(2) In evaluating the considerations described in paragraph (i)(1) of this section, the Chief may consult other Federal agencies with the appropriate expertise and information.

(3) The approval of a priority area at the State level does not necessarily mean that funds will be allocated to that area. Funding may be allocated to a priority area for one or more years. Proposals that are not funded may be resubmitted to the Chief for subsequent review and consideration to determine if the resubmitted proposal meets Federal priorities for funding.

§ 1466.6 Conservation plan.

(a) The participant shall develop and submit a conservation plan for the farm or ranch 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 NRCS, and is approved by the conservation district. This plan forms the basis for an EQIP contract.

(1) When considering the acceptability of the plan, 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 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 applicable NRCS field office technical guide, for the priority natural resource condition of concern in

the priority area or the significant statewide natural resource concern outside a funded priority area.

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

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

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

(1) A description of the prevailing farm or ranch 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, rangeland types 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, tribal, 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 may accept an existing conservation plan developed and required for participation in any other USDA 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 EQIP contract. It is the responsibility of the participant to ascertain and comply with any and all applicable program or regulatory requirements, and the NRCS 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.

§ 1466.7 Conservation practices.

(a)(1) The NRCS, with 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 practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve soil, water, or related natural resources or to provide for environmental enhancement.

(2) The designated conservationist, 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.

(3) Where new technologies or conservation practices that provide a high potential for maximizing the environmental benefits per dollar expended have been developed, 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 or conservation practices at maximizing environmental benefits per dollars expended. NRCS may involve other entities in the pilot testing, including conservation districts, extension and research agencies and institutions, private agribusiness sector, and others.

(b)(1) CCC cannot provide cost-share assistance to construct an animal waste management facility on a large confined livestock operation. CCC may fund other structural, vegetative, or land management practices needed in the conservation management system to address the livestock-related natural resource concerns on a large confined livestock operation. Except as provided by paragraph (b)(2) of this section, CCC will consider a producer with confined livestock operations of more than 1,000 animal unit equivalents to be a large confined livestock operation and ineligible for financial assistance for construction of an animal waste management facility. When determining the number of livestock in the participant's operation for eligibility purposes, the total number of animals confined at all locations of the participant's livestock operation will be used.

(2) The NRCS State conservationist may develop a definition for a large confined livestock operation as it applies to that particular State using criteria recommended by the State technical committee. The criteria will consider but not be limited to such factors as:

(i) The cost-effectiveness of the facility and its potential to maximize environmental benefits per dollar expended;

(ii) The ability of the producer to pay for the cost of animal waste management facilities;

(iii) The significance of the natural resource concern resulting from the operation;

(iv) The prevailing State, Tribe, or local implementation of various Federal, Tribal, and State environmental laws and regulations, including regulations promulgated pursuant to the Clean Water Act (33 U.S.C. 1251 *et seq.*) and guidance developed under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b);

(v) The particular characteristics of modern livestock operations; and

(vi) The size of the operation in relation to other confined livestock operations in the State or region.

(3) The NRCS State conservationist, in consultation with the State technical committee, shall place emphasis on the considerations contained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section when developing the criteria to define a large confined livestock operation.

(4) The definitions developed by NRCS State conservationists must be approved by the Chief, who will also provide oversight on their

implementation. In approving the definitions the Chief will consider:

(i) The justification for the definition; and

(ii) The need for consistency in the definitions used between and among States, to the greatest extent possible.

(5) The Chief will report semiannually to the Secretary during the first two years of the program on the implementation of paragraph (b) of this section, including the impact that may have occurred to the environment and to the structure of livestock agriculture.

§ 1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) A NRCS State conservationist may utilize technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian tribes, 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 shall provide technical coordination and leadership for the program, regardless of who provides technical and other assistance, and shall assure that the quality of the assistance obtained from other Federal, State, and local agencies, Indian tribes, and the private agribusiness sector is acceptable for purposes of this part. Non-NRCS assistance shall not be deemed to satisfy an EQIP contract entered into under subpart B of this part until the assistance has been approved by NRCS.

Subpart B—Contracts

§ 1466.20 Application for contracts and selecting offers from producers.

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

(b) CCC will accept applications throughout the year. NRCS shall rank and select the offers of applicants periodically, as determined appropriate by NRCS after consultation with the State technical committee and on the recommendation of the local work groups.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a priority area. NRCS shall prioritize applications from the same EQIP-funded priority area using the criteria specific to the area. The FSA county committee, with the assistance of 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 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 FSA county committee, with assistance of the designated conservationist and FSA county executive director, 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) NRCS will rank all applications using criteria that will consider:

(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, tribal, or local environmental laws;

(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.

§ 1466.21 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. FSA shall determine the eligibility of participants. The FSA county committee, with NRCS concurrence, shall use the NRCS ranking consistent with the provisions of § 1466.20 and grant final approval of a contract.

(b) An EQIP contract shall:

(1) Incorporate by reference all portions of a conservation plan applicable to EQIP;

(2) Be for a duration of not less than 5 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 or ranch 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 the provisions of § 1466.25;

(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, consistent with the provisions of § 1466.24; and

(iv) Supply information as required by CCC 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 consistent with the provisions of § 1466.22; and

(5) Any other provision determined necessary or appropriate by CCC.

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

(d) There is a limit of one EQIP 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 EQIP assistance. Subject to the payment limitation set out elsewhere in this part, a participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous EQIP contract on the same tract.

§ 1466.22 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 CCC. 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 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.

§ 1466.23 Cost-share and incentive payments.

(a)(1) The maximum direct Federal 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 Federal share of cost-share payments to a participant shall be reduced proportionately below 75 percent, or the cost-share limit as set in paragraph (a)(3) of this section, 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.

(2) CCC 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.

(3) CCC shall set the cost-share and incentive payment limits, as determined by:

(i) The designated conservationist, in consultation with the local work group and 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.

(4) Cost-share payments and incentive payments may both be included in a contract.

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

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

(1) $10,000 for any fiscal year; and

(2) $50,000 for any multi-year contract.

(c) To determine eligibility for payments, CCC shall use the provisions in 7 CFR part 1400 related to the definition of person and the limitation of payments, 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 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)(i) The NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of $10,000 in any fiscal year, up to the $50,000 limitation in paragraph (b) of this section. 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:

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

(B) The natural resource problem is so severe that resolving the problem immediately is needed;

(C) 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 5–10 year period; or

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

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

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(5) 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.

(6) A participant shall not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same land under the Conservation Reserve Program (16 U.S.C. 3831–3836) or the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*).

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

(e) CCC expenditures under a contract entered into during a fiscal year shall not be made until the subsequent fiscal year.

§ 1466.24 Contract modifications and transfers of land.

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

§ 1466.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, CCC shall give the participant a reasonable time, as determined by the FSA county committee, 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, the FSA county committee may, in consultation with NRCS, terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a

contract termination shall be effective immediately upon a determination by the FSA county committee, 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 § 1466.35, 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)(1) If CCC 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 determined in accordance with part 1403 of this chapter. The FSA county committee, in consultation with NRCS, 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.

(2) If CCC 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 FSA county committee, in consultation with NRCS, will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, CCC 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.

(4) The participant may voluntarily terminate a contract if CCC agrees based on CCC's determination that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1466.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under EQIP in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

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

(2) The designation of State-approved priority areas, national conservation priority areas, or significant statewide natural resource concerns;

(3) NRCS funding allocations to States or priority areas;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, 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.

§ 1466.32 Access to operating unit.

Any authorized CCC 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 CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Paul W. Johnson,

Vice President, Commodity Credit Corporation.

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