

provided for unrestricted cost-share assistance to new and expanding animal operations and CAFOs in flood plains. The Department recognizes that Congress made adjustments to the EQIP legislation in response to concerns from their constituents. The Department included those concerns when developing the proposed rule. The Department is required to administer the laws as passed by Congress and provide EQIP assistance to all producers. Also, the Department feels EQIP, as proposed, fully supports the NRCS progressive planning policy by allowing producers to request assistance for only those conservation practices they are ready to implement.

## *2. Preamble Language in the Proposed Rule*

Two comments received were concerned with the length of the public comment period and requested an extension of the comment period. Several hundred comments appreciated the opportunity given for input and the varied mediums by which comments would be accepted. Over 1,250 responses were received from a range of interested parties from across the Nation. NRCS believes that a sufficient length of time was provided and it has received sufficient input to proceed to a final rule.

A basic element of EQIP implementation throughout the proposed rule is the use of the locally-led process to adapt EQIP to local conditions. The Department received 176 comments in support of locally-led conservation, frequently commenting that the process in the proposed rule over-rides local decision making and is a top down process. NRCS believes that the locally-led process is the optimal mechanism for implementation of EQIP and believes that the proposed rule strengthens the process. The locally-led process utilizing the State Technical Committees and Local Work Groups has been discussed in detail in the preamble to the 1997 EQIP final rule (FR 28258, vol. 62, no. 99, May 22, 1997) and does not need to be reiterated.

In the preamble NRCS requested comments on eight specific issues. Where applicable the public comments and recommendations have been incorporated in the final rule or will be included in program guidance and delivery activities.

One of the questions in the proposed rule asked for comments on adopting a limited waiver program, as well as on innovative mechanisms that NRCS could consider to institutionalize alternatives for encouraging conservation implementation. NRCS

received 46 comments regarding credits and credit trading. Twenty-seven respondents suggested pilot programs to resolve the issues discussed, three suggested proceeding with caution, seven respondents did not support the concept, 4 suggested that the waiver should apply to all previously applied practices, and three respondents stated that USDA does not have any interest in credits a producer might receive from applying conservation practices with EQIP assistance. Some respondents interpreted the discussion in the proposed rule that NRCS would initiate, support and administer an environmental credit trading program. The actual intent is that NRCS would waive all financial interest to any environmental credits that accrue to a participant implementing conservation practices using EQIP assistance. NRCS has determined that NRCS does not have any financial interest in any environmental credits that may accrue to a participant who implements conservation practices with EQIP assistance.

The proposed EQIP rule also asked for comments regarding how to administer a loan program in accordance with the Ground and Surface Water Provisions of the 2002 Farm Bill. NRCS received 13 comments suggesting looking into existing funding programs such as the Nonpoint Source Partnership, which is a collaborative effort between the state and EPA. The Department believes that the 2002 Farm Bill authorizes the implementation of a loan program and does not need to address the issue in the final rule. NRCS will reserve the option to utilize a loan program in the future and will do so with policy and program guidance in appropriate manuals and handbooks.

The proposed rule also requested comments regarding how the Klamath Basin water conservation provisions should be implemented. NRCS received 10 comments; five suggesting that the Klamath Basin issue was more than agriculture and that NRCS should cooperate with other stakeholders in the development of a basin plan; 4 recommending water quality improvements should be considered as "net savings" because the end result is more water available for wildlife purposes; and one comment that the administrative costs should not be borne by the Klamath Basin allocation. NRCS reaffirms the language of the proposal rule that the two Klamath Basin State Conservationists will lead a basin planning effort that may require additional funding from sources other than EQIP funding. NRCS also believes that there is sufficient water in certain

times of the year that can be captured with on-farm storage allowing participants to accomplish the statutory intent of "net-savings" without reducing irrigation water usage. NRCS will provide guidance through the EQIP Program Manual that "net-savings" in the Klamath Basin can be accomplished in three ways; reduced irrigation water usage, improved off-site water quality, and increased on-farm storage of water.

## **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, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. There were seven comments expressing support to include language that another purpose of the program is to assist producers in complying with environmental regulations. Several other comments suggested that wildlife should be specifically stated as a resource issue and that NRCS should explicitly state which land uses are eligible. EQIP shall be implemented in a balanced manner in accordance with the statutory purposes for which EQIP was established, including the objective to optimize environmental benefits. The proposed rule contained broad language to facilitate the identification of a range of priority natural resource concerns at the state and local level based on National priorities and the Department believes that this is the appropriate approach. The final rule now contains, however, compliance with environmental regulations as a purpose of the program.

### *Section 1466.2 Administration*

In this section, NRCS is identified as an agent of CCC and that NRCS will consult with FSA at the National level in the development of policies, priorities and guidelines. This section also reaffirms NRCS's commitment to locally-led conservation through the State Technical Committees and Local Work Groups. One hundred and sixty-six comments express support for locally-led conservation. One comment suggest including private landowners on Local Work Groups. USDA believes that it is important for both NRCS and FSA to consult on program implementation and that the proposed arrangement takes advantage of the proven expertise of both agencies. USDA strongly supports locally-led conservation and