

should be included as a specific National priority.

Forty four respondents recommended adjusting the air quality National priority by adding "atmospheric concentration" before or emissions and 16 recommended that national air quality priorities should not apply to Indian Tribes.

NRCS received 60 comments that the soil erosion National priority limited use of EQIP to land with lower rates of erosion that are of a particular concern. Additionally, NRCS has determined that the reference to highly erodible land could be misleading with regards to providing assistance for compliance with the Highly Erodible Land (HEL) provisions of the 1985 Farm Bill.

The fourth National priority, at-risk species habitat recovery, received 56 comments. Thirty two respondents recommended that this priority be directed to wildlife and wildlife habitat. Six respondents recommended defining at-risk to include Federally listed as well as species of regional concern with one of these misinterpreting the proposed rule to be Federally listed species only. Four respondents supported the priority as presented and 14 respondents suggested removing at-risk species priority with two suggesting there were other programs to accomplish this objective.

In addition, NRCS received recommendations to emphasize or add National priorities; five suggested EQIP is the implementation vehicle for salinity control measures authorized by the Colorado River Basin Control Act; five recommended adding quail restoration; eight suggested emphasizing grassland, grazing land and rangeland, 13 wanted the National priorities to support private non-industrial forest land, and three wanted the priorities to include promoting agricultural production.

NRCS received five comments that the National priorities appeared to be a compliance assistance program for laws and regulations of other agencies. Fifty comments supported the establishment of state level conservation priority areas at the state's discretion, three respondents suggested that there should not be National priorities but national guidance in support of state and local priority resource concerns, and two suggested that legislative requirement for 60 percent for livestock practices be applied at the state level and not the national level. The Department believes that the National priorities in the proposed rule meets Congressional intent in providing direction and flexibility to the state and local decision-makers to utilize EQIP

resources to address locally identified priorities and optimize environmental benefits. The National priorities in the proposed rule are focused on natural resources and resource issues. These priorities are sufficient to guide local program delivery and only the soil erosion priority will change in the final rule to remove any potential conflict with Highly Erodible Land provisions of the 1985 Farm Bill.

Although the fundamental philosophy of the program, assisting agricultural producers to install conservation practices to provide environmental benefits, has not changed; the 2002 Farm Bill removed the authority of the Department to establish priority areas to which program resources are focused. NRCS eliminated the requirement that a portion of the funds allocated to the states would be focused into Conservation Priority Areas. The Department believes that NRCS methodology to optimize environmental benefits through an approach that integrates consideration of National Priorities in four key program components: (1) The allocation of financial resources to States; (2) the allocation of financial resources within states; (3) the selection of conservation practices and the establishment of cost-share and incentive payment levels; and (4) the application ranking process will provide the same level of environmental conservation as targeting to conservation priority areas. The intent of EQIP is to provide maximum flexibility to local decision-makers to implement the program. The identification of National priorities is the first step to accomplish this and is the basis for the allocation for funds from the National NRCS to state-level NRCS.

Two respondents commented on the need to include the use of EQIP to mitigate the impact of natural disasters in the National priorities. No changes to the rule were made because EQIP is not intended to be a disaster program.

#### *Section 1466.5 National Allocation and Management*

This section of the proposed rule contains information regarding allocation of funds from the national level to the state level, the establishment of an incentive payment, reviewing progress and accountability, and delegation of authority to the State Conservationists to implement the program to achieve National priorities.

USDA received 37 comments related to the National allocation. Nine respondents suggested including the amount of tribal land in the allocation formula, three suggested adding unmet

need based on previous year's number of applications, 4 recommended using regulatory compliance as a factor, two suggested forest land as a factor, and six suggested directing more funding to crop base agriculture and less to animal agriculture. Several respondents also recommended adjusting the allocation based on the intensity of agriculture in each state. Another five respondents suggested that National Association of Conservation Districts (NACD) and the Forest Service (USFS) should be consulted when making allocation decisions and one respondent supported making National Allocation task force report strategy available to the public. NRCS is in full support of reviewing and revising, as necessary, the National EQIP allocation formula on a regular basis. NRCS intends to incorporate a wide variety of partners and customers in this process and intends to fully disclose the strategy of the task force to the public.

NRCS also received 10 comments regarding the use and reuse of EQIP funds, suggesting that funds made available from cancelled contracts should be able to be re-used to fund new contracts. The Department understands the position of the respondents, however, the re-use of funds is a limitation associated with the authorization language in the 2002 Farm Bill.

In the proposed rule, NRCS specifically asked for comments regarding implementation of an incentive award; "what approaches NRCS can use to efficiently and effectively implement this award incentive". NRCS received over 472 comments regarding this item, the majority of which, 415, supported the concept and suggested that the incentive be substantial but did not offer other specifics. Eleven respondents suggested that accomplishments with Indian tribes should be considered as a factor for determining the incentive award; three recommended using only how local conservation needs were addressed; and one suggested using leveraging, use of TSPs, and multiple resource and long-term benefits. Forty one respondents were against the incentive award because they felt it would penalize states for not having National priorities, penalizing farmers for reasons beyond their control, or establish a bidding competition between states to compete for available funds. One respondent suggested using previous year performance to allow the award to be made early in the year. NRCS believes there is a potential confusion between the term "incentive award" used in the proposed rule and the incentive