

planning phase of the EQIP application in response to NRCS's request for comments regarding how incentive payments to develop a CNMP should be implemented. The proposed rule did not require that a full CNMP needed to be developed during the initial planning process, the proposed rule stated that a participant who receives EQIP assistance for an animal waste storage or treatment facility will provide for the development and implementation of a CNMP. This provision will remain unchanged in the final rule in support of the legislative intent for implementation of CNMPs in the 2002 Farm Bill.

The use of EQIP assistance for new and expanding large animal facilities received 520 comments two of which supported using EQIP for all animal facilities regardless of size and 518 respondents suggest that the final EQIP rule that prohibit funding of new and expanding large animal facilities and of large animal facilities in floodplains except to move the facility out of the floodplain. The Department removed the restriction on providing EQIP assistance to waste storage or treatment facilities for large animal facilities in accordance with the 2002 Farm Bill. The Department supports the concept that the program assistance should be available to all operations and should be awarded to those operations that provide the optimal environmental benefits. Section 1466.20 and program direction will provide state and local decision-makers guidance for ranking of applications and selecting contracts to achieve this objective.

NRCS received 4 comments to remove the provision to start or complete a conservation practice within the first twelve months of an EQIP contract. NRCS believes that the purpose of EQIP is to implement conservation activities. Producers who are not ready to implement practices should not apply for assistance. However, NRCS also understands that there often are extraneous circumstances that can delay implementation, therefore, the final EQIP rule will provide an opportunity for the participant to request a waiver from the State Conservationist to delay implementation.

NRCS received five comments regarding allowing more than one contract on a tract of land at the same time; 4 in support and one against. The proposed EQIP rule removed this eligibility requirement from the previous rule. NRCS believes that allowing producers to have two or more contracts on a parcel supports the concept of "progressive planning" which allows producers to implement

practices in accordance with their ability.

NRCS received two comments recommending that marketing facilities be eligible for EQIP contract. The Department believes that the statutory intent is to direct EQIP assistance to producers for implementation of conservation practices on working agricultural land. NRCS will provide guidance with the EQIP Program Manual that non-production ancillary businesses such as agricultural supply buyers and sellers are not eligible to participate in EQIP. This interpretation also applies to producer organizations and cooperatives that provide support but do not operate working land for the production of food or fiber.

NRCS received two comments that a producer who prematurely terminates an EQIP contract should be eligible to reapply for a new contract. NRCS believes that the proposed rule does not prevent a participant from reapplying after prematurely terminating a contract. NRCS's objectives are to implement cost-effective conservation and optimize environmental benefits and will award contracts to those applications that best achieve these goals. Since funds released by termination of an EQIP contract are not available for reuse on another contract, NRCS has provided, in the final rule, an option for reimbursement of administrative and assistance expenses (liquidated damages) incurred. NRCS will provide guidance in the EQIP Program Manual regarding the nature and extent of liquidated damages.

Section 1466.9 EQIP Plan of Operations

The EQIP plan of operations identifies the time and place of the conservation practices that the applicant has decided to implement. The Department has received 485 comments requesting NRCS to reinstate the provision for conservation planning that was removed from the 1997 EQIP rule. One additional comment was received in support of the reduced planning requirements but with a caveat that a level of planning should be maintained to assure that the implementation of one conservation practice that addresses one resource concern will not have a negative impact on another resource concern. The Department fully supports the comment and feels the policy guidance of NRCS adequately addresses the issue. NRCS planning policy contained in the NRCS General Manual and NRCS National Planning Procedures Handbook require the assessment of positive and negative impacts as part of the technical assistance provided to producers. The

objective of NRCS planning policy is a whole farm resource management plan and NRCS policy incorporates the philosophy of "progressive planning" that includes development and analysis of alternatives and documentation of the producer's decisions. The EQIP final rule supports the "progressive planning" philosophy and allows EQIP assistance to be used to help a producer implement conservation practices as they make resource conservation decisions.

NRCS received 19 comments related to the definition of net-water savings. The Department will not create a National definition of "net water savings" due to the complexity of state and local water rights laws, and water programs and policies. In the final rule the responsibility for establishing a definition for "net water savings" is delegated to the State Conservationist.

Section 1466.10 Conservation Practices

NRCS received 67 comments which did not support the provision in the proposed rule to consider only land irrigated in three out of the last five years as eligible for EQIP assistance for irrigation practices. Sixty one respondents identified that NRCS recommended crop rotations for certain crops only required irrigation two years in a five year rotation. Six comments supported assistance for irrigation on land with no irrigation history to reduce production risk and in support of farm viability. The Department believes EQIP resources should be utilized to reduce the environmental impacts of irrigation on water resources. The Department has changed the restriction in the final rule to provide opportunities for irrigation assistance for those crops that are irrigated two out of five years.

NRCS received eight comments opposing the availability of incentive payments to participants for development of a CNMP especially when they are required to do so by EPA regulation. The Department supports the statutory intent to encourage the development of comprehensive nutrient management plans and provides the state and local decision-makers the authority to offer incentive payments and to determine incentive payment levels.

NRCS received 10 comments supporting allowing NRCS to approve interim conservation practices and financial assistance for pilot testing new technologies or innovations. Ten respondents recommended that state-of-the-art technology should not be the only basis for defining innovation and that innovation could also be defined as