

a particular group of producers who have not adopted a commonly accepted technology. The Department believes that innovative approaches should be supported. NRCS has agency policy to provide for the development and implementation of innovative technology. NRCS also believes that unproven innovative technology that has not been field tested should be used cautiously until its utility is proven for a specific or wide spread application. NRCS will provide program guidance that innovation is more than state-of-the-art technology; innovation could also mean new techniques to certain groups or could also mean application evaluation approaches that consider the benefits of grouping practices rather than a scattered approach.

Several general comments were received regarding lack of access to USDA programs and need for special considerations for Indian lands. One respondent commented about the types of practices to be cost shared. Consideration must be given to those large blocks of land that have basic conservation practice needs or needs differing from those who have had access to programs since inception. Recommend that NRCS: (1) Develop "special project" areas that warrant the prioritization of conservation practices differing from those of the state. (2) Develop "allowable rates" for construction, labor, and material specific to the special project areas. The final rule has not changed. The process in the proposed rule allows for implementation of EQIP at the local level to adapt program delivery for varying resource issues, costs of implementation and other unique circumstances.

Section 1466.11 Technical and Other Assistance Provided by Qualified Personnel Not Affiliated With USDA

Four comments were received related to the inclusion of the private sector as qualified personnel who can provide EQIP assistance. The final rule added individuals who are certified by NRCS as a Technical Service Provider (TSP) to the list of providers an EQIP participant may select from to provide assistance.

Selection of appropriate TSP by EQIP participants was a concern of two respondents. The proposed EQIP rule allows participants to select a TSP. Participants may choose any qualified TSP or NRCS to provide EQIP related technical assistance.

Seven respondents asked to add 1994 Land Grant Colleges to the list of potential TSPs. The rule has been edited to show the inclusiveness of possible TSP rather than exclusiveness by

naming various groups or individuals. "Participants may use technical and other assistance from qualified personnel who are certified as Technical Service Providers by NRCS."

A total 46 comments on Technical Service Provider liability, certification, confidentiality and training were received. At the time the proposed EQIP rule was developed the specifics of TSP were not known. The TSP interim final rule was promulgated in 7 CFR part 652 and it addresses the issues of liability, certification, confidentiality, and training.

Section 1466.20 Application for Contracts and Selecting Offers From Producers

NRCS received 58 comments suggesting the objective of cost-effectiveness was to reinstate competitive bidding and 466 respondents suggested rewriting the rule to prohibit competitive bidding. Another 14 responders recommended reinstating competitive bidding. NRCS does not believe using cost-effectiveness means competitive bidding since the cost refers to the total cost, not just the federal cost-share. Cost-effectiveness can be interpreted two ways. First in terms of greater environmental benefits for the same cost or second, providing EQIP assistance for the least-cost alternative. NRCS believes that the first interpretation will be accomplished by the ranking processes developed by state and local decision-makers. NRCS will provide program direction that in EQIP cost-effectiveness means NRCS will provide assistance to implement the least-cost alternative that would achieve the desired resource benefits. Participants may choose to adopt more costly alternatives but they would have to bear the additional costs. The proposed rule will not be changed.

Two respondents commented that the ranking factors should include recognition of the need for outreach or targeting of populations and areas with historically low participation rates. Additional comments recommended the insertion of tribal law compliance requirements into this section and include a reference to consulting with Tribal Conservation Advisory Councils. The EQIP ranking criteria consider the significance of the resource concerns, not the type of land ownership. However, any unique resource concerns identified by underserved populations may be added as a priority natural resource concern through participation in the State Technical Committees. NRCS also intends to conduct outreach to increase program accessibility for underserved populations.

The Department received 56 comments that suggest EQIP assistance should not be used for large animal facilities. EQIP should prioritize funding to small and medium size producers and two of which supported using EQIP for all animal facilities regardless of size. Another 94 respondents suggest that EQIP should be targeted to small and medium farms and 560 recommend language to prevent discrimination against small and medium sized farms. The Department has reviewed the economic benefits of several alternatives and determined that EQIP can treat the waste from the largest number of animal units for the least cost by allowing funding for large facilities. However, the Department also recognizes that small and medium producers may be least able to afford the adoption of conservation practices in their operation, and that EQIP may assist these producers avoid future regulations. NRCS has therefore included a provision in the final rule that the ranking process used to select application for contracts will be size neutral, that is, the process will not give preferential treatment to an application based on the size of the agricultural operation.

Additionally NRCS received 466 comments that the EQIP application ranking process should explicitly reward sustainable practices and exceptional performance and that will prioritize the best solutions not the biggest problems. NRCS believes that the state and local decision-makers will develop processes that achieve both cost-effectiveness and optimal environmental benefits. NRCS will provide full public disclosure by providing the EQIP ranking processes used at the state and local level on the NRCS Web site at <http://www.nrcs.usda.gov/programs/eqip>. NRCS intends to reward exceptional performance through the performance incentive funding.

NRCS received 162 comments on the approval of EQIP contracts by the Regional Conservationist when the contract totals more than \$100,000. The comments related to the increased administrative burden and delay this requirement will have on the development of EQIP contracts and in producers implementing practices. The Department feels this is a necessary component of EQIP to assure that the program is implemented to achieve the stated EQIP program objective. Therefore, the requirement is maintained in the final EQIP rule.

More than 175 comments were received on the requirement that State Conservationist approved EQIP