

contracts that included practices with cost share rates greater than 50 percent. The concern was the delay this would have on EQIP contract development and practice implementation. This requirement changed in the final rule (1466.23(d)) to allow the State Conservationist, with concurrence of the Regional Conservationist, to approve state and local EQIP practice cost lists that include any structural practice with a cost share rate greater than 50 percent. This change maintains the program objective of optimizing environmental benefits and improves program delivery compared to the proposed rule.

#### *Section 1466.21 Contract Requirements*

NRCS received 31 comments regarding the amount of an EQIP contract. Eight respondents support a \$50,000 contract cap, 16 support a \$450,000 contract limit and seven respondents support no limit. Another 34 responders suggested the \$450,000 contract limit was an injustice against small farmers since only large farmers can afford 25 percent of \$450,000. NRCS believes that, due to the large demand for the limited resources which have been made available for EQIP, a contract limit is appropriate at this time. The final rule will establish the maximum amount of financial assistance for an EQIP contract is \$450,000.

NRCS also received 19 comments regarding statutory language. Three respondents opposed attribution of payments to individuals and support tracking payments to tax identification number of entities. Another 16 supported payments in the first year of a contract. The Department does not have flexibility to change either of these provisions. The statutory limit for payments to any individual or entity, directly or indirectly, for all EQIP contracts between 2002 and 2007 of \$450,000 requires NRCS to track EQIP payments to an individual. NRCS has removed compliance with the triple entity rule (7 CFR 1400.301(a)) as an EQIP eligibility requirement.

#### *Section 1466.22 Conservation Practice Operation and Maintenance*

The Department received no comments relative to this section of the proposed rule.

#### *Section 1466.23 Cost-Share Rates and Incentive Payment Levels*

NRCS received a total of 638 comments related to the setting of cost-share rates and incentive payment levels. The proposed rule's preamble stated that NRCS intends to fund most structural practices at no more than 50

percent cost-share. Over 545 respondents recommended that cost-shares for structural practices should be no less than 75 percent as permitted by the 2002 Farm Bill. They suggested that this provision was analogous to a "buy-down" which was removed from the previous rule; is contrary to locally-led conservation philosophy, and detrimental to the producers who have suffered severe economic hardships over the last few years. Another 177 respondents identified that the requirement in section 1466.20 of the proposed rule that established the State Conservationist as the approving authority for any EQIP contract with a structural practice with a cost-share greater than 50 percent is an administrative burden. Another 10 respondents suggested providing 90 to 100 percent cost-share rates to limited resource producers/ranchers and beginning farmers/ranchers, or 75 percent cost-share for specific practices such as salinity control, diesel engine emission control, or wildlife plant species pollinators.

Two respondents suggested that a practice cap could be used in place of a reduced cost-share rate, 4 respondents expressed concern that the state and local decision-makers should be allowed to establish differential cost-share rates for practice that offer more environmental benefits, and three respondents suggested that producers required to develop a CNMP under the EPA CAFO/AFO rule should not be eligible for incentive payments for the development of a CNMP.

The setting of cost-share rates and incentive payment levels is the third component of optimizing environmental benefits. The guidance for optimizing environmental benefits in the proposed rule directs state and local decision-makers to identify the priority natural resource concerns and then select the most appropriate practices that will address those concerns and set rates to encourage the implementation of the best suited practices. The Department fully supports using locally-led conservation to identify the practices that will be used and setting the cost-share rates. Except for 100 percent cost-share, the final rule does not prohibit any of the recommendations received and allows for local innovation to structure a cost-effective program delivery. The Department feels the proposed rule provides the flexibility necessary for the state and local decision-makers to optimize program delivery. However, the final rule will require that the State Conservationist, with the Regional Conservationist's

concurrence, must approve the EQIP cost-share lists used in the state.

NRCS received 11 comments opposing the guidance provided in the preamble of the proposed rule that "no payments will be made for land management practices that are currently accepted and practiced in the agricultural community". The Department believes that EQIP should provide cost-effective conservation. Producers who have not adopted commonly accepted techniques for their operation are in the minority and therefore the funds would most likely have a greater benefit when used for other practices. If, however, the particular circumstances warrant the implementation of these practices, the proposed rule does not prohibit the State Conservationist from offering assistance for them. The guidance will continue to be provided in the EQIP Program Manual.

An additional six respondents wanted assurance that the provision in the proposed rule to adjust EQIP cost-share to ensure that the combined financial contributions (all public and private sources) for a structural conservation practice will not exceed 100 percent and would not restrict additional cost-shares from non-USDA sources. It is not the intent of the Department to restrict additional cost-shares that a participant may receive from non-USDA sources but to achieve cost-effectiveness, USDA will reduce EQIP assistance when non-USDA assistance together with USDA assistance for a practice exceeds 100 percent. The Department does not support providing maximum cost-share to a participant when other source of assistance bring the total to more than 100 percent of the cost of installing a structural conservation practice.

Six respondents commented that State Tribal Conservation Advisory Council (TCAC) should be included in the setting of cost-share rates and determination of cost-share rates and incentive payment levels. Five commented that cost-share should remain at 75 percent for structural practices on Indian Nations because of the economic hardships for Indian Nations. The rule has not been amended. Under existing rules, TCAC can be a part of the State Technical Committee that provides advice to the State Conservationist for setting cost-share rates incentive payments.

#### *Section 1466.24 EQIP Payments*

Ten respondents commented that a social security number should not be the only number used to keep track of EQIP payments to individuals because it would create a burden for many Indians