

which NRCS will begin evaluating and ranking applications.

Before evaluating individual applications, the State Conservationist or designee, with advice from the State Technical Committee, and Local Work Groups, will develop ranking criteria to prioritize producer applications. The ranking process will evaluate applications according to the magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns. The ranking will determine which applications will be awarded contracts. The ranking process will be designed to award higher scores for offers from producers that address National and State priorities in conjunction with local resource concerns. The ranking process will score the producer's offer of conservation practices according to the following criteria as well as other locally defined pertinent factors:

- Use of cost-effective conservation practices;
- Treatment of Multiple Resource Concerns;
- Use of conservation practices that provide environmental enhancements for a longer periods of time; and
- Compliance with Federal, state, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation.

NRCS proposes that state and local lists of eligible practices, cost-share rates and incentive payment levels, and the ranking process will be posted on the NRCS EQIP website before final ranking of applications. NRCS will also make the appropriate ranking process or processes available at each local NRCS office.

NRCS is proposing to delete the ranking and selection criteria currently in § 1466.20(f)(1) and (g). The first criterion refers to consideration of the environmental benefits per dollar. As this purpose has been eliminated from the authorizing statute, this criterion is no longer necessary. Consistent with 2002 Act, NRCS is proposing that cost considerations alone will not be the only factor when comparing two applications that are expected to provide similar environmental benefits.

NRCS will give additional consideration to contracts that will help the producers comply and exceed requirements of environmental laws, such as EPA's Concentrated Animal Feeding Operations (CAFO) regulatory requirements, the Clean Water Act and Endangered Species Act.

In development of the ranking process, NRCS will recognize that EQIP can play an important role in assisting

producers with conservation, restoration, and enhancement of fish and wildlife habitat on working lands. By identifying sound habitat practices targeted at priority species that are at risk from long term declines, EQIP can help producers aid those species while avoiding complications arising out of listings. Many at risk species are benefited by existing soil and water conservation practices. With minor additional effort they can be aided by additional practices that will benefit all resources simultaneously in a manner compatible with working operations. NRCS, state technical committees and local working groups will continue to collaborate with United States Fish and Wildlife Service, National Marine Fisheries Service, and state fish and wildlife agencies to capitalize on opportunities to proactively address at risk fish and wildlife species in conjunction with other resource concerns.

NRCS is also proposing that the approving authority for EQIP contracts will be the State Conservationist or designee except that:

- (1) The approving authority for any contract that contains a structural practice with a cost-share rate exceeding 50 percent is the State Conservationist, and
- (2) The approving authority of all contracts with payments greater than \$100,000 is the NRCS Regional Conservationist.

Section 1466.21 addresses the requirements for EQIP contracts. Only land that meets the purpose and goals of the program and is to be treated under EQIP will be included in the contract. NRCS is including the following changes to the current EQIP language:

- In Section 1466.21(a) that both cost share payments and incentive payments may be included in the EQIP contract.
- Pursuant to section 1240B(b)(2) of the 1985 Act, as amended by the 2002 Act, Section 1466.21(b) the minimum contract length is revised from five years to one year after installation of the last practice. This part was also revised to allow more than one contract on a tract as a result of the Department's streamlining efforts.
- In Section 1466.21(b) NRCS proposes in paragraph (3)(iv) to require the implementation of a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility.

Section 1466.22 addresses the participant's responsibility for conservation practice operation and maintenance. This part remains unchanged.

Section 1466.23 addresses cost-share rates, incentive payment levels, grants, and payment eligibility and limitations. In conjunction with Section 1466.10, this is the third key component in "optimizing environmental benefits."

Subject to the National direct funding caps, State Conservationists with advice of Local Work Groups and the State Technical Committee can set cost-share rates and incentive payment limits as determined appropriate to encourage a producer to perform the land management practice that would not otherwise be initiated without such assistance.

The number and type of eligible practices and the cost-share rates and incentive payment levels determined by the State Conservationist or designee influence the extent to which the program will optimize environmental benefits and what resource concerns will be addressed. The State Conservationist or designee, with advice from State Technical Committees and Local Work Groups will determine which conservation practices are eligible for EQIP funding in each state. The State Conservationist or designee will consider the level of environmental benefits of the eligible conservation practices and will use that information to determine cost-share rates and incentive payment levels. In general, cost share rates will be determined for structural practices, while incentive payments will be determined for land management practices. No incentive payments will be made available for land management practices that are currently generally accepted and practiced in the agricultural community. The State Conservationist or designee will set cost share rates and incentive payments that reflect:

- (1) The cost effectiveness of conservation practices;
- (2) The number of resource concerns a practice will address (*e.g.* a waste treatment facility that reduces ammonia emissions benefiting both air and water quality should have a higher cost-share rate than a waste storage lagoon.);
- (3) The degree of treatment of priority natural resource concerns;
- (4) The longevity of the beneficial environmental effect derived from the practice; and
- (5) The energy savings demonstrated by the practice.

NRCS intends to fund most structural practices at no more than 50 percent cost-share. NRCS will make payments to the producer when NRCS determines that the conservation practices specified in the contract are satisfactorily established. NRCS intends to monitor and evaluate the program to ensure that