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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578–AA20

Conservation Farm Option

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: Section 335 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) amended the Food Security Act of 1985 (the 1985 Act) establishing the Conservation Farm Option (CFO) Program. The Commodity Credit Corporation (CCC) administers the CFO under the supervision of the Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS), with concurrence by the Executive Vice President of the CCC who is the Administrator of the Farm Service Agency (FSA). This final rule describes how CCC will implement CFO as authorized by the 1985 Act, responds to comments received from the public during the comment period, and makes clarifications to improve implementation of the program.

EFFECTIVE DATE: September 29, 1998.

ADDRESSES: This rule may also be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.nrcs.usda.gov; select the 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Water Issues Team Leader, Conservation Operations Division, Natural Resources Conservation Service; phone: 202–720–3524; fax: 202–720–4265; e-mail: da.smith@usda.gov, Attention: CFO; or Edward Rall, Economic and Policy Analysis Staff, Farm Service Agency; phone: 202–720–7795; fax: 202–720–8261; e-mail: erall@wdc.fsa.usda.gov, Attention: CFO.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) determined that this final rule is significant and was reviewed by OMB under Executive Order 12866. Pursuant to section 6(a)(3) of Executive Order 12866, CCC conducted a benefit-cost analysis. The analysis estimates CFO will have a beneficial impact on the adoption of conservation practices and, when installed or applied according to technical standards, will increase net farm income through a reduction in soil erosion, improved water quality, and wildlife habitat. In addition, benefits would accrue to society through maintenance of long-term productivity, enhancement of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, CFO will not impose any obligation upon agricultural producers or owners that choose not to participate.

A copy of this analysis is available upon request from Daniel Smith, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

CCC determined through an Environmental Assessment for the Conservation Farm Option Program, dated January 15, 1998, that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment and the Finding of No Significant Impact may be obtained from Daniel Smith, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0174.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this final rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, a risk assessment is not required.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to 5 U.S.C. Sec. 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it has been determined by CCC that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to obligate fiscal year 1998 funds which would otherwise be forfeited. Furthermore, if this final publication is further delayed, program implementation will not begin until 2000. Accordingly, this rule is effective upon publication in the **Federal Register**.

Discussion of Program

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) amended the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 et seq.) and established the Conservation Farm Option (CFO) pilot program. Under the 1985 Act, CCC is authorized under CFO to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Accordingly, other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for direct CCC payment, although an organization such as that described may be reimbursed by the landowner. Upon a landowner or producer's request, CCC will provide technical support to assist in implementing the provisions of this part. Traditional agricultural conservation programs have provided farmers and ranchers with cost share, land retirement, and wetland restoration payments as incentives to protect and conserve soil, water, and other natural resources. However, participation in several individual programs for which a farmer could be eligible may require more than one conservation plan and contract for the farm or ranch, and it may also require numerous payments throughout the year without an assurance that, in the aggregate, all of the farm's environmental needs are met. Through CFO, CCC provides a single contract, conservation farm plan, and payment for implementation of innovative and environmentally-sound methods for addressing natural resource concerns and results in the consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP).

NRCS will provide overall program management and implementation leadership for CFO, including technical leadership for conservation planning and implementation; while FSA will be responsible for the administrative processes and procedures for applications, contracting, program allocations and accounting.

Participation in CFO pilot projects is open to all production flexibility contract holders within an approved pilot project area who are eligible for CRP, EQIP, or WRP, without regard to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Persons with disabilities who require alternative means for communication of program information should contact USDA's TARGET Center at: (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (202) 720–5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Overview of the Conservation Farm Option Pilot Program

As specified in the 1985 Act, the CFO program is available to producers of wheat, feed grains, upland cotton, and rice. Additionally, owners and producers must have a farm with contract acres enrolled in CCC's production flexibility contracts established under Title I of the 1996 Act and meet the eligibility requirements in either CRP, EQIP, or WRP in order to participate in the CFO program. Owners and producers accepted into the CFO must enter into 10-year contracts, which may be extended an additional 5 years.

CFO participation is determined in a two step process: First, CCC selects CFO pilot project areas based on proposals submitted by the public; then, CCC accepts applications from eligible producers within the selected pilot project area.

Pilot Projects

CFO pilot projects are intended to address resource problems and needs that are well documented and on a scale that will facilitate the evaluation of the effectiveness of the systems and practices installed, as well as that of the entire program. CCC will select CFO pilot project areas based on the extent that the proposal:

1. Demonstrates innovative approaches to conservation program delivery and administration;
2. Proposes innovative conservation technologies and systems;
3. Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;
4. Ensures effective monitoring and evaluation of the pilot effort;
5. Considers multiple stakeholder participation within the pilot area;
6. Provides additional non-Federal funding; and
7. Addresses conservation of soil, water, and related resources, water quality protection or improvement; wetland restoration and protection; and wildlife habitat development and protection; or other similar conservation purposes.

An interdepartmental committee made up of representatives of several Federal agencies will review the proposals and make recommendations to the NRCS Chief, who is a Vice President of the CCC, based on criteria available to the public in the CFO proposal package. The Chief, NRCS, with FSA concurrence, will select proposals for funding.

CFO proposals may be developed for an individual or group of eligible producers. Individual and groups that desire to coordinate individual producer plan development and implementation activities may submit pilot project proposals. If the proposal is funded, the individual or group will be responsible for providing leadership in the overall local planning effort, including activities such as information delivery, monitoring, evaluation, and coordination with local agencies, States or subdivisions thereof, Tribal, and Federal agencies. However, because authorizing legislation specifies that CFO funds are available only to producers of wheat, feed grains, upland cotton, and rice, entities not meeting this criteria are not eligible for CCC payment. Despite the restriction on CCC funding third parties, producers are not precluded from making a payment to a third party.

Determining Eligibility Within Approved Pilot Project Areas

After selection of pilot project areas, all producers or owners with production flexibility contracts within the project area and who are eligible for either CRP, EQIP, or WRP will be eligible to enroll in the program. The 1985 Act requires eligible producers and owners to prepare a conservation farm plan, which becomes part of the CFO contract. This conservation farm plan can be developed for a portion of the farm or the entire farm. The plan describes all conservation practices, acreage retired, and wetland restoration, or protection practices to be implemented and maintained on acreage subject to contract. The 1985 Act also requires the plan to contain a schedule for the implementation and maintenance of the practices and to comply with highly erodible land and wetland conservation requirements of Title XII of the 1985 Act.

The 1985 Act further requires participants to agree to forgo payments under CRP, EQIP, and WRP. In lieu of these payments, the 1985 Act requires the Secretary to offer annual payments under the contract that are equivalent to the payments the participant would have received had they participated in the CRP, EQIP, or WRP. Because of this statutory requirement, payments, payment limitations, participant and land eligibility requirements, and practices for CFO are determined utilizing the applicable regulatory provisions under the CRP, EQIP, and WRP. Therefore, this final regulation references the regulations for CRP (Part 1410), EQIP (Part 1466), and WRP (Part 1467) when setting forth the provisions for:

1. Eligible conservation practices,
2. Eligibility to earn land retirement rental payments,
3. Eligible land upon which such practices can be installed and on which such land retirement rental payments can be made,
4. The eligibility requirements for the participant,
5. The payment calculations, and
6. The payments issued to a ''person'' for payment limitation purposes.

For example, the CFO conservation farm plan and contract specify a conservation practice on field 1 similar to those eligible under EQIP, and a land retirement rental payment and conservation practice on field 2 similar to those eligible under CRP. The regulations in Part 1466 for EQIP will be referenced to determine eligible practices, eligible land, participant eligibility, payment, and payment limitation for field 1. Likewise, the regulations in Part 1410 for CRP will be referenced to determine eligible practices, eligible land, participant eligibility, land retirement rental payment and conservation cost-share payment, and payment limitation for field 2. The total payments calculated and limited by the applicable provisions in Parts 1466 and 1410 will be totaled to determine the amount which will be issued for the CFO annual rental payment.

Because the regulations at Parts 1410, 1466, and 1467 could be revised which would require a corresponding revision of this part, the provisions on eligible practices, eligible land, participant eligibility, land retirement rental payment, and conservation cost-share payment, and payment limitation are provided for CFO through references to the regulations for CRP, EQIP, and WRP. CFO is not authorized to acquire easements. Therefore, acreage that is subject to a WRP easement will not be included in the CFO contract and WRP easement payments will not be incorporated into the CFO annual payment. However, CFO will be used to install any reasonable practice needed to restore wetlands, and appropriate adjacent uplands.

Although CCC funds for CFO are not authorized for technical assistance, upon a participant's request, NRCS may provide technical assistance to a participant. Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance, such as conservation planning; conservation practice survey, design, layout, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists. In all situations, NRCS retains approval authority over the technical adequacy of work accomplished by non-NRCS personnel for the purpose of maintaining compliance within CFO.

Ranking and Selecting Applications Within Approved Pilot Project Areas

After a pilot project area has been approved, the NRCS Chief will notify the appropriate group or individual. Once notified, the individual will contact the appropriate NRCS field office to complete the CFO contract. For group proposals, the NRCS Chief will notify the appropriate group sponsor and corresponding NRCS and FSA field offices. Once notified CCC will accept applications throughout the fiscal year. Periodically, as determined by the State Conservationist based on the needs of the pilot project area, applications will be ranked and selected according to selected ranking criteria. Once the applicant is determined to be eligible to participate in CFO, the NRCS designated conservationist will meet with the applicant to calculate the offer index. The offer index will include: an inventory of resources; identification of natural resource problems and concerns; treatment needs; incentive payment levels; and cost-share and land retirement rates that the producer may accept. The applicant may improve his/her offer index by one or more of the following: providing additional environmental benefits without increasing the program costs, or accepting a rate or payment level less than the established rate or payment level. The designated conservationist, in consultation with the local work group, will utilize selected ranking criteria to prioritize applications from the same pilot project area. The designated conservationist, in consultation with the local work group, will rank all applications using criteria that will consider:

1. The degree to which the application is consistent with the pilot project proposal;
2. The environmental benefits that will be derived by applying the conservation practices in the conservation farm plan which will meet the purposes of the program;
3. An estimate of the cost of the planned conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications may present the least cost to the program; and
4. The environmental benefits per dollar expended.

In creating this criteria, the designated conservationist, in consultation with the local work group will consider the following factors:

(1) Soil erosion;
(2) Water quality;
(3) Wildlife benefits;
(4) Soil productivity;
(5) Conservation compliance considerations;
(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;
(7) State water quality priority areas; and
(8) The environmental benefits per dollar expended.

The FSA county committee will approve funding in the pilot project area in accordance with the NRCS ranking.

Payments

When enrolling in CFO, the participant enrolls the entire farm, as constituted by FSA. Once enrolled, the individual will forego accepting any future payment, under CRP, EQIP, or WRP on the farm, except for payments earned but not paid before enrollment in CFO.

CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant under CRP, EQIP, or WRP. For example, a practice that is determined eligible under WRP will receive the cost-share rate for that practice in accordance with WRP. The same holds true for land retirement rates under CRP and cost-share rates under both CRP and EQIP. If a participant chooses to acquire a land retirement rental payment and also wishes to install a practice on that particular parcel in which he/she is receiving the land retirement payment, CRP cost-share rates will be utilized. For new technologies and innovations, the cost-share rate received will be equivalent to that received under EQIP. Cost-share rates shall not exceed the total amounts calculated among these three programs. For a practice that is eligible under all three programs, the participant will chose between CRP, EQIP, or WRP to determine what type of cost-share the participant will receive. Where cost-share payments to a participant exceed 100 percent of the actual cost of the practice, the CCC payments to a participant shall be reduced so that the total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

Cost-share or incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

Transferring from CRP, EQIP, or WRP to CFO

Producers or owners who wish to participate in CFO do not need to be enrolled in CRP, EQIP, or WRP to be eligible for CFO. Producers or owners who are currently enrolled in CRP, EQIP, or WRP must terminate the existing contract(s). Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

In cases where a participant transfers from CRP to CFO, the participant must ensure that net environmental benefits under a CRP contract are maintained or exceeded under the CFO contract. For example, a landowner who was enrolled under CRP may opt to crop retired land acreage, once the acreage is enrolled under CFO. This may be done without liquidated damages, as long as the environmental benefits under the former CRP contract are maintained or exceeded for the whole farm, according to the approved conservation farm plan and CFO contract. Under this scenario, the landowner may forego his CRP rental payment and receive payments for a particular structural or vegetative practice, if applicable.

Analysis of Public Comment

On April 2, 1998, the CCC issued a proposed rule with requests for comments (63 FR 16142). The proposed rule described program administration and program requirements that CCC would use to implement the program. Thirty-three responses, containing nearly 200 specific comments were received during the 60-day comment period. Entities responding included individuals, national conservation organizations, national farm and commodity organizations, national wildlife organizations, State natural resource agencies, State associations, and community development organizations. Changes in this final rule are based on consideration of the comments received. Other minor changes have been made in the text for clarity and to facilitate the application of the regulation.

General Comments

Nine comments were received about the comment period on the proposed regulation and the pilot project proposal application period for 1998. All nine respondents felt the time constraints were limiting. Several of these respondents commented that the application process occurred at an inappropriate time of year, planting season, for prospective participants to provide serious thought into the application process. Respondents also had difficulty obtaining information on the types of practices that would qualify. One respondent commented that the time constraint provided an advantage to existing projects and there was insufficient time to develop new or innovative ideas.

Response: CCC believes that a sufficient length of time was provided; however, in the future, consideration will be given concerning the time of year that the request for proposals is announced.

Both positive and negative comments were received about the general nature of the program. Four respondents had reservations about the program; one respondent was disappointed that the CFO program appeared to be a duplication of existing programs; another questioned the advantage of enrolling acreage in CFO versus the individual conservation programs; and the other two thought the program should offer more flexibility. One commented on the program goals and requested that the program should encourage innovative activities. One supported implementing CFO in a manner consistent with the ''Discussion'' section of the preamble. One indicated the program has the potential to be a true locally led process with opportunities for partners to implement a program without sideboards or constraints imposed by a State Committee.

Response: CCC intends for the CFO program to be a flexible program that offers participants an opportunity to treat all of their natural resource concerns on the farm without limiting planning efforts to certain types of acreage. It enables the participant to achieve the environmental benefits of all the other programs under a single contract and a single conservation farm plan. Although the CFO has these advantages, the CFO program is still subject to the sideboards established in the authorizing language. CCC is required to consider certain provisions in the other programs such as eligible practices, payments the participant would have received under these programs when determining CFO payments, and county land retirement acreage limitations. CCC appreciates these comments, however, these comments do not address language in the regulation. Therefore, changes have not been made in the final regulation as a result of these comments.

Two comments were received regarding agency workload concerns and the lack of NRCS personnel available to handle the additional work created by CFO.

Response: USDA considered these comments; however, it believes that the additional work caused by CFO will be manageable. These comments did not justify a modification to the final rule.

Forms

Twelve comments were received on the application form. Five of these respondents felt the application was difficult to understand, intimidating or frustrating. One of these respondents indicated that although the form was a detriment to the program, they were provided support from USDA staff which enabled the form to be completed. One respondent requested that the application include more details, especially where innovative practices are discussed. One respondent indicated farmers were most frustrated with presenting budget information. These farmers questioned how lump sum payments would be used in determining costs and benefits of the project; how will it impact ranking without providing more information; whether there are project or individual contract limitations; and whether contributions from other sources have to be secured at the time the proposal is written. One respondent commented on the length of time it took to complete the form. It took this respondent twice as long to complete the work as was projected by CCC. Clarification is needed in instructional materials. However, this respondent indicated that the process was beneficial because it forced the producer to articulate the long-range goals for the farm. Two respondents submitted positive comments about the process, citing the instructional addendum and the availability of the scoring sheet to prospective participants. One respondent recommended CCC determine through a public forum whether a CFO-specific form would be more appropriate.

Response: Although these comments do not directly relate to the provisions in the proposed rule, CCC plans to reexamine the application form, and where necessary revise it, prior to the start of fiscal year 2000, the next time when CCC will solicit the public for CFO pilot project area proposals. CCC believes that monitoring and evaluation of the fiscal year 1998 pilot project areas will assist in making this application form more concise and user-friendly. In addition to revising the application form, CCC will analyze the instructional materials and the application process to determine where it can be improved for the next proposal submission period. The public burden estimate related to completing the form will also be evaluated to determine whether adjustments need to be made.

CFO Interface With Other Conservation Programs

Twenty-two comments were received regarding the relationship between CFO and the CRP, WRP, and EQIP. Ten of these comments simply requested clarification of how the interface between the three programs will be handled. Eight respondents were concerned about the ability to switch from CRP, EQIP, or WRP to CFO and expressed that penalties should not apply. One comment was concerned about whether payment limitations applied, and five sought innovative practices and project designs that may not be permitted under the other conservation programs.

Three respondents commented that CFO could be a positive alternative to CRP; however, one of these warned against creating a program like CRP because of its adverse impacts on certain farmers. For one respondent this comment was due to CRP's impact on persons wanting to lease acreage for agricultural activities; the second respondent wanted CFO to be available to those whose acreage was not accepted into CRP. One respondent recommended that CFO have no impact on WRP 30-year or permanent easements. Two comments were received regarding program payments. One respondent requested that the WRP component of a CFO contract only consider potential cost-share payments and the other requested that CRP payments remain separate from CFO contracts due to the high cost and concern about contract payment limitations.

Response: CCC agrees that the proposed rule provided little information regarding the relationship between CFO and the other conservation programs. Language has been clarified and sections revised throughout the rule to provide clarification regarding the impact of persons offering acreage for CFO when they are already participating in CRP, WRP, or EQIP or when they have land that is eligible for these programs. To clarify, producers or owners who wish to participate in CFO do not need to be enrolled in CRP, EQIP, or WRP to be eligible for CFO.

However, eligible producers or owners, in an approved pilot project area who are currently enrolled in CRP, EQIP, or WRP must terminate such contracts and transfer the remaining practices and land retirement rental payments to a CFO contract. In cases where a participant transfers from CRP to CFO, the participant must ensure that net environmental benefits under a CRP contract are maintained or exceeded under the CFO contract. The landowner is also required to maintain practices that were enrolled under the terminated CRP or EQIP contract, or WRP cost-share agreement. These remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the approved conservation farm plan and CFO contract. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless the lifespan of the practice has been extended under the CFO contract.

The CFO authorizing language provides that in exchange for CFO payments, the participant shall not participate in and shall forgo payments under CRP, WRP and EQIP. Therefore, a CFO participant cannot offer to enroll CFO contract acreage in CRP, EQIP, or WRP. Likewise, when the CFO contract is approved any existing CRP or EQIP contract, or WRP cost-share agreement will be simultaneously terminated without penalty. CFO will not impact any acreage subject to a WRP easement nor will this acreage be included in a CFO contract. Payments that have been earned before the CFO contract is approved may be provided to the producer or owner under the terms of that program. Future payments that would have been earned under such contract or agreement will be incorporated into the CFO contract and included in the CFO payment. The CFO authorizing language has no payment limitation. Payment limitation will apply to the extent that the total payments calculated, in accordance with Parts 1466, 1467 and 1410, are limited in the applicable provisions in Parts 1466 and 1410. The payments will be totaled to determine the amount which will be issued for the CFO annual payment.

Third Party Organization Administrative Issues

Sixteen comments were received regarding other organizations performing certain activities under CFO. Eleven respondents requested that CFO provide funding to non-government, non-profit organizations. One of these respondents requested that the final rule add specific authorization for direct funding for group proposals for project planning, education, outreach, conservation farm research design, monitoring, evaluation, and administration. Another recommended 20 percent of a pilot project funds be available to pay for the services of the proposing organization, including non-profits. According to the respondent, CFO will never reach its full potential if only individual farmers apply. Another respondent commented that it is an ''administrative nightmare'' to have after-the-fact subcontracting with each individual participant which results in higher administrative costs. Several comments were related to the role of non-profit organizations and state and local agencies within the context of CFO. While one respondent requested clarification of the role of local non-profit organizations, another comment suggested that USDA should develop incentives for state and field offices to be more proactive in program implementation. One respondent requested that funding be available for information outreach efforts to change behavior and achieve practice adoption.

Response: Under the 1985 Act, CCC is authorized under CFO, to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Accordingly, other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for direct CCC payment, although an organization such as that described, may be reimbursed by the landowner.

Program Administration

Fourteen comments were received regarding program administration. One respondent requested general clarification. Three respondents requested that states and local entities be permitted to participate in the process of implementing the program by either contracting through private businesses or by allocating program funds to these organizations through a grant or loan program.

Response: Under the 1985 Act, CCC is authorized under CFO to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for CCC payment, although an organization such as that described, may be reimbursed by the landowner.

One comment requested that the role of the Federal-state-local relationship be clarified.

Response: CCC will coordinate with Federal, state, and local agencies where necessary and has attempted to clarify this intent throughout Part 1468. For example, the final rule has clarified that the local work group assists in ranking CFO applications.

One respondent encouraged USDA to integrate and coordinate CFO pilot project areas with state-level recommendations already identified in conservation programs. However, existing rankings of affected watersheds for other farm bill or state programs should not completely supersede local efforts to delineate new watersheds or areas for consideration.

Response: CCC concurs with this philosophy and believes that the participation of the local work group will assist in integrating pilot project areas with state-level recommendations; however, direct proposal submission to the national level will also assist lower state-ranked watersheds to acquire some assistance if that pilot project area meets CFO objectives and requirements.

One comment requested clarification on whether Soil and Water Conservation District (SWCD) cost-sharing programs can be identified as partnership contributions, or if a specific allocation for a specific proposal must be secured.

Response: Soil and Water Conservation District contributions, including technical and cost-share assistance, may be considered partnership contributions. Currently, CCC does not have specific requirements as to the extent that matching funds must be secured from other agencies or organizations.

One comment urges CCC to actively seek to develop cooperative agreements or Memorandums of Understanding (MOUs) at the local, state and Federal levels to ensure compliance with state and Federal regulations for farmers and ranchers to participate. Two responses were received regarding the impact of the Endangered Species Act and other environmental requirements on CFO participants. One respondent indicated that landowners need assurance that the actions they undertake under the CFO which benefit endangered and/or threatened species will not result in penalties during or after the contract period. Without a cooperative agreement between CCC and the U.S. Fish and Wildlife Service (FWS) integrating ''safe harbor'' type assurances into the CFO, or a formal recognition by FWS of CFO plans as habitat conservation plans, landowners will not have adequate legal protection. The other respondent provided that any MOU or agreements should provide reduced liability associated with off-farm environmental degradation or nuisance law suits. This so-called ''safe harbor'' or environmental assurance that incorporates relief from additional regulations and enforcement is necessary to ensure active voluntary participation.

Response: Where local and State people request NRCS to arrange such cooperative agreements to ensure compliance with state regulations, NRCS is authorized to enter into these agreements. However, in situations such as the Endangered Species Act, while CCC is sensitive to its requirements, CCC does not have the authority to provide safe harbor for those wishing to ensure compliance with other Federal regulations, including the Endangered Species Act.

Three comments were received regarding the joint program administration between NRCS and FSA. One respondent indicated the administration provisions are confusing as written; the second respondent did not want joint agency concurrence on environmental issues. The third respondent wanted to know which agency ensures proper administration of the program and what is the role of the Cooperative State Research, Education, and Extension Service (CSREES).

Response: Administration of CFO is shared by the Natural Resources Conservation Service and the Farm Service Agency. NRCS will provide overall program management and implementation leadership for CFO, including technical leadership for conservation planning and implementation, while FSA will be responsible for the administrative processes and procedures for applications, contracting, program allocations and accounting. CCC believes that CSREES will play an instrumental role in assisting with outreach and education both within and outside selected pilot project areas. As a result of these comments, Section 1468.2 has been revised to provide clarification regarding the responsibilities of the agencies involved with implementing the program.

One respondent recommended a new section (f) be added to indicate that NRCS and FSA shall cooperate and make the best use of agency programs that support CFO management and implementation, including, but not limited to programs that support assessment and planning activities.

Response: This recommendation has not been adopted as the regulation is sufficiently flexible to permit this activity.

Definitions

Three respondents requested that the definition of ''conservation farm plan'' be changed. All respondents felt the definition in the proposed regulation does not reflect the most recent information on farm planning. One respondent requested the definition be expanded to indicate that conservation plans should be based on an adequate assessment of conservation needs. The other two respondents requested more extensive changes to reflect participant's resource problems and ecologically based management of the whole farm or ranch.

Response: The definition of conservation farm plan has been altered to match the definition found in NRCS' National Planning Procedures Handbook (NPPH). This has been done in order to create consistency across USDA program boundaries.

One respondent recommended revising the definition of technical assistance to include reference to site-specific assessments.

Response: CCC believes that site-specific assessments are an integral part of the conservation planning process and have been adopted throughout the National Planning Procedures Handbook (NPPH), NRCS' policy manual for conservation planning. According to the NPPH, site-specific assessments are necessary in planning; therefore, any reference to conservation farm plans or conservation planning assumes that a site-specific assessment has been conducted.

One respondent requested that the definition of conservation practices be amended to allow for practices approved by NRCS for experimentation and testing.

Response: NRCS existing standards and specifications for interim practices already permit experimentation and testing; therefore, this recommendation has not been adopted.

One respondent recommended the definition of land management practice be revised to include ''resource conserving crop rotations, cover crop management, and soil organic matter and carbon sink management.''

Response: The sample of land management practices included in the definition was not intended to identify all potential practices. However, CCC adopted this recommendation to ensure users of this regulation understand that the term ''land management practices'' includes resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Ten respondents requested clarification of the term, A innovative technologies.''

Response: A definition of innovative technologies has been included in Section 1468. 3.

Several other comments were received regarding the definitions in the proposed regulation. CCC determined that the definitions of these other terms are sufficiently flexible to meet the needs of the respondent and the program.

Program Requirements

Five respondents requested the requirement that a producer be participating in production flexibility contracts be removed. One of these respondents indicated this requirement would make implementation of CFO on Tribal, allotted or Indian trust land impossible. While another indicated it may adversely impact limited resource and minority farmer's participation.

Response: CCC cannot adopt this recommendation because the CFO authorizing language requires that a producer be participating in the Agriculture Market Transition Program and have a production flexibility contract in order to participate in CFO.

Two respondents recommended subsection (a) be revised to include sustainable agriculture production practices and crop rotation systems.

Response: CCC believes that the term ''conservation practices'' embodies the concept of sustainable agricultural practices. This includes resource-conserving practices, such as crop rotation systems, conservation tillage, and other sustainable agricultural practices.

One respondent requested provisions regarding persons who inherited property or obtained the property as a result of death but did not have a producer interest in the property when eligibility of the program was determined.

Response: The final rule has been revised in section 1468.5 to clarify the eligibility of persons who obtain interest in acreage as a result of death. Under CFO, eligibility requirements mimic the eligibility requirements of CRP, EQIP, and WRP, depending on which program is the source of CFO practices to be implemented.

One respondent recommended the language in subpart (c)(4) be revised to indicate that CCC will consider whether the participant has conducted adequate assessment activities to identify resource needs when considering the acceptability of the plan.

Response: CCC believes that the conservation planning process adequately takes into account assessment activities in identifying resource needs.

One respondent questioned whether CFO participation would preclude participation in any future USDA or other Federal conservation or environmental protection incentive programs and whether producers or owners are foregoing other program by their participation in CFO.

Response: The CFO authorizing language only requires that participants forego participation in the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP) and the Environmental Quality Incentives Program (EQIP) for the term of the CFO contract. Participation in CFO does not necessarily inhibit a person from participating in other USDA programs, such as the Wildlife Habitat Incentives Program, Forestry Incentives Program, etc.

One respondent questioned whether CFO proposals are limited to only pilot areas.

Response: Currently, CFO is authorized as a pilot program in the 1985 Act. As a result, it is limited to pilot project areas. These pilot project areas will test not only practices, but also the program, itself.

This section has been revised throughout the rule for clarity, and therefore no specific references to section numbers have been made.

Innovative Technology

Several comments were received regarding innovative technology. Eight of these respondents indicated the final regulation needs to provide more information about the use of innovative technology. One respondent wanted the innovative technology to have scientific merit and a high chance of success before tax dollars are expended on testing such technology. One respondent indicated that innovative projects cannot be planned in fiscal year 1998. This respondent provided administrative alternatives to solve this issue. Another respondent identified technologies such as remote sensing, satellite and aerial imaging that will offer the ability to identify what plant nutrients are available in crops, identify stress points in a field as well as identify drainage problems in fields. Two respondents recommended that the regulation be revised to indicate that practices need not be eligible under EQIP, CRP, or WRP, as long as they are approved by the NRCS.

One respondent wanted clarification regarding the process for approving innovative technologies. This respondent wanted language added to encourage innovation and to stimulate experimentation and adaptive research and demonstration.

Response: To be considered as an eligible conservation practice, the innovative technology must provide beneficial, cost-effective approaches for participants to change or adopt operations to conserve or improve soil, water, or related natural resources. Innovative technologies and practices are authorized under CFO. Payment for innovative technologies is limited to what would be received under EQIP since EQIP is the only program of the three programs which authorizes innovative technologies. NRCS will authorize, at the state and national level, interim practice standards and cost-share payments for innovative technologies that it deems has an environmental benefit. The policy outlining innovative practices and technology is further clarified in 1468.7.

CFO Pilot Project Areas

Eleven comments were received regarding CFO pilot program area proposals. One respondent provided that as a result of the leadership requirements in the overall planning process, it is doubtful that individual farmers will participate.

Response: CCC disagrees with this comment. One hundred twenty-one applications, covering over 14 million acres were received from farmers or farm groups. Forty-two of these proposals were from individual farmers. CCC believes that had farmers been provided more time to develop proposals, the number of submitted proposals would have grown substantially. This comment is not reflected in the text of the final regulation.

One respondent supported wetland restoration and protection through CFO but expressed concern regarding converting valuable wildlife habitats to wetlands. The respondent requested that the pilot projects include evaluations for the quality of existing habitats that may be destroyed for wetland creation projects.

Response: As outlined in 1468.20, the NRCS designated conservationist will work with the applicant to ensure that wildlife benefits will be accounted for when determining the ranking of the application. CCC believes that the site assessment conducted during the conservation planning process with the participant will give a good indication of what habitats to protect, conserve, or create.

One respondent indicated the small acreage requirement provides a disincentive for group projects.

Response: CFO does not have a maximum acreage requirement in the final rule; however, the CCC process scoring sheet does award points to project areas under 32,000 acres. For areas less than 64,000 acres, which have less than 25 inches per year in annual precipitation or are predominantly forest or rangeland, the acreage points are also awarded. CCC supports this rationale due to limited funds in the initial years; however, as funding increases, CCC anticipates that targeting to larger acreage may become more prevalent. If CCC changes the targeting to larger acreage, CCC will adjust the scoring accordingly.

One respondent recommended a criterion be added to reflect the Scoring Sheet's preference for smaller rather than larger pilot projects or areas.

Response: This comment was considered; however, it was not reflected in the text of the final rule, since the amount of points awarded for each criterion is not specified in the final rule. In any case, the points awarded for size on the CCC–1211 are sufficient and further criteria for size limitations are not necessary.

One respondent indicated that innovative practices need more points in order to be funded.

Response: This comment was considered; however, it was not reflected in the text of the final rule. CCC believes that the points allocated to innovative technologies are sufficient.

One respondent indicated that the 1998 pilot project area response was not reflective of program interest. Program interest was severely comprised by a short timeframe at the worst time of year; lack of access to information and forms at the local level; and disallowing non-NRCS entities to apply for funds despite explicit encouragement to apply.

Response: In the future, CCC will take into consideration the timing of when the request for proposals is announced and ensure that adequate information and forms are provided at the local level. This comment was considered; however, it was not germane to the development of the final rule.

One respondent requested that applications be approved under a continuous sign-up basis.

Response: Once a pilot project area has been approved, CCC will accept applications throughout the year. CCC will rank and select applicants' offers periodically, as determined by the State Conservationist, based on the needs of the pilot project area. This process is clarified in § 1468.20.

One respondent requested that the language in (a)(2) reflect the 7-point criteria found in the ''Discussion of the Program'' section of the proposed regulation.

Response: This recommendation has been adopted.

One respondent recommended that priority be given to proposals that could not be funded by other programs such as CRP, EQIP, and WRP.

Response: This recommendation has not been adopted due to the fact that it may limit USDA's ability to enroll some of the Nation's most environmentally sensitive areas.

Three respondents requested new language be included that would require CCC to evaluate whether the participant has conducted adequate assessment activities to identify resource needs when selecting proposals. Another respondent wanted the regulation to emphasize the necessity for assessment and planning. At a minimum, CCC should reward detailed assessment and planning by those who partake in these activities by enhancing their eligibility for the program.

Response: CCC agrees with the need for adequate assessment and believes that for the most part, the content and quality of the proposals which are received will indicate how much assessment and planning has been conducted.

Five respondents commented on the selection process. Four of these respondents commented on the national process and one requested clarification regarding how applicants in approved pilot areas will be ranked at the national and local levels. Two respondents requested that local and state or other entities with an interest in CFO be permitted to be involved in the review of the proposals. One respondent indicated that the national team review should also include filtering out proposals which are not based on ''sound science or research''. One respondent commented that national reviewers may lack the experience necessary to competently review ''innovative'' proposals. This respondent provided recommendations for obtaining the required experience to make competent recommendations to the selecting official.

Response: Periodically, a request for proposals will be announced in the **Federal Register**. In this request, CCC will solicit proposals from individuals, States, or subdivisions thereof, Tribes, universities, and other organizations to cooperate in the development and implementation of CFO pilot programs. The request for proposals will contain the CFO proposal form, instructions for completion of the CFO proposal form, and the criteria for evaluating proposals. A national interdepartmental team, consisting of representatives from several Federal agencies, will use this published criteria to rank and select the proposals. Consisting of individuals who have a wide variety of expertise, the interdepartmental team will select proposals which meet program guidelines and will provide its recommendations to the NRCS Chief. The Chief, with FSA concurrence, will approve proposals. CCC will utilize a national interdepartmental team to make decisions not only because the size of the interdepartmental team would be too large and cumbersome to be efficient, but also because CCC believes adequate state and local input should be obtained at the local level when group proposals are submitted.

Conservation Plan

Five respondents requested clarification or more specific language regarding conservation planning requirements.

Response: CCC has attempted to clarify planning requirements in Part 1468.9 and in the following response:

A conservation farm plan is a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS field office technical guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and takes advantage of opportunities, at a conservation management system level. NRCS adopts a nine-step planning procedure process in order to thoroughly assess the value of the natural resources on the participating acreage. In the nine-step conservation planning process, problems and opportunities are identified; the participant's objectives are determined; resources are inventoried and analyzed; alternatives are formulated and evaluated; decisions are made; the plan is implemented and finally evaluated. This process is a cyclical one which changes as the resource conditions and the participant's objectives change.

Under CFO, a conservation farm plan must meet the objectives of the pilot project area; address the pilot project area's resource concerns; and allow the participant to achieve a cost-effective resource management system, or some portion of that system. While a conservation farm plan that includes all acres on the farm is not required, it is encouraged. Moreover, while a participant is encouraged to develop a resource management system (RMS) that identifies and treats every concern on the farm, a RMS level of treatment is not required. To simplify the conservation planning process for the participant, the conservation farm plan may include Federal, state, Tribal, or local government program or regulatory requirements. The development or approval of a conservation farm plan will not be deemed to constitute compliance with program or regulatory requirements administered or enforced by another agency, unless so indicated by that agency. It is the participant's responsibility to comply with all applicable statutory and regulatory requirements.

Participants are responsible for implementing the conservation farm plan. CCC may accept an existing plan developed for another USDA or CCC program if the conservation farm plan meets the requirements of CFO. When a participant develops a conservation plan for more than one program, the participant will clearly identify the portions of the plan that are applicable to the CFO contract. Previously installed CRP, EQIP, and WRP practices along with their operation and maintenance requirements will also be incorporated into the CFO plan, unless otherwise specified in the conservation farm plan and CFO contract. The conservation farm plan forms the basis of the CFO contract.

One respondent requested that the following language be inserted to 1468.6(a), ''Reflect adequate assessment activities to identify natural resource needs and conservation practices.''

Response: CCC believes that the conservation planning process adequately takes into account assessment activities in identifying resource needs.

One respondent requested that the following words be added to 1468.6(d)(1) ''NRCS should actively pursue assistance in providing services such as site-specific assessments.''

Response: This recommendation has not been adopted. The language as written provides CCC the authority to utilize the services of others.

One respondent requested CCC identify the items that would be included as technical assistance that may be provided by others, including but not limited to: site specific assessments to identify planning needs; conservation planning; conservation practice survey, layout, design and installation; information, education, and training for producers; and training, and quality assurance for professional conservationists.

Response: Upon a participant's request, NRCS may provide technical assistance to a participant. Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance, such as conservation planning; conservation practice survey, design, layout, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists. In all situations, NRCS retains approval authority over the technical adequacy of work accomplished by non-NRCS personnel for the purpose of maintaining compliance within CFO.

Three respondents requested changes to the provision that does not provide funding for technical assistance offered by ''qualified professionals.'' One of these respondents commented that the provision to make participants pay for their own specialized technical assistance is unfair to participants. Group projects would be inefficient since specialized technical assistance could not be provided on a farm-by-farm basis. In addition, some innovative practices could be too technical for NRCS employees.

Response: CCC supports the use of qualified professionals, other than NRCS personnel, to assist in providing technical assistance; however, CCC is not authorized to pay individuals other than those who are actual program participants. As a result, it is up to the participant to utilize and pay for these third-party qualified professionals.

Two respondents requested the final rule differentiate the difference between ''private agribusiness sector'' and ''qualified professionals'' or clarify the term ''qualified professionals'' who provide technical assistance.

Response: The term ''qualified professionals'' indicates professionals employed by either the public or private sector. Private agribusiness indicates those individuals who are employed by the private sector. Throughout Part 1468, CCC will attempt to clarify and differentiate between the two terms.

One respondent encouraged NRCS to limit the amount of time for developing a conservation plan until an applicant is accepted into the program.

Response: CCC shares the concern in limiting the amount of time for developing a conservation farm plan; however, in order to effectively evaluate proposals, CCC believes that a conservation farm plan must be written in order to ascertain resource needs and to rank applications on a fair and equitable basis.

One respondent indicated it would be a major disincentive to voluntary participation if farmers and ranchers could not satisfy all or at least most program requirements and environmental regulations by working with one agency and one plan.

Response: CCC supports the idea of having its conservation farm plans assist farmers and ranchers in meeting environmental regulations; however, it is the Federal, state, and local agencies, not CCC, who determine whether a conservation farm plan meets environmental regulations and program requirements.

Two respondents commented on the confidentiality of CFO plans. One of these respondents noted a discrepancy in the ''Overview'' section of the preamble and Section 1468.21(b)(1) regarding the conservation plan's relationship with the CFO contract. The Overview indicated the conservation farm plan will become part of the CFO contract while section 1468.21(b)(1) provides that only those portions applicable to CFO will be included with the CFO contract. The respondent preferred the language in section 1468.21.

Response: These concerns are reflected in Section 1468.9(h)(2).

One respondent explained that crop rotations are a valuable land management practice and should be encouraged and used as part of the conservation plan. However, there should be flexibility to allow the farmer to contemplate different mixes of crops that could occur over the 10-year contract period.

Response: The conservation planning process and the CFO regulation allow for modifications to the contract. Section 1468.24, Contract Modifications and Transfers of Land, provides that the participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements. This final rule requires that the conservation farm plan modification be approved by the Conservation District.

Conservation Practices

One respondent would like to see hybrid poplars established as an eligible crop on CFO acres, with rotational harvesting, allowed following the 10-year contract period.

Response: Innovative technology may include vegetative measures such as establishing hybrid poplars. To be considered as an eligible conservation practice under CFO, the innovative technology must provide beneficial cost-effective approaches for the conservation and improvement of soil, water, or related resources. For practices such as the establishment of hybrid poplars, NRCS may authorize, at the state and national levels, interim practice standards and cost-share payments for innovative technologies that it deems has an environmental benefit.

Application for CFO Program Participation

One respondent recommended that when selecting participants, CCC should place emphasis on a watershed or landscape-based pilot project area. One respondent requested CCC to consider the degree to which the application reflects an adequate assessment of conservation needs of a particular farm or ranch, while one respondent recommended the ranking criteria be expanded to include the degree to which the farm plan reflects integrated, site-specific, multiple resource design and strategy.

Response: In selecting pilot project areas, CCC will consider areas that meet the criteria outlined in 1468.4.

Contract Requirements

One respondent recommended USDA encourage continuation of the CFO practices beyond the contract period with some ongoing incentives.

Response: CCC does not have authority to provide incentives to participants beyond the contract period.

One respondent indicated the 10-year contract commitment may discourage some from participating when EQIP agreements can be for 5 years.

Response: Contract duration is established in the authorizing CFO language and cannot be altered by CCC. Therefore, this comment was considered, but rejected in the development of the final rule.

One respondent expressed that whole farm contracts should make whole farm planning efficient and flexible.

Response: CCC supports the concept of a whole farm contract and the whole farm plan; however, while a whole farm plan is encouraged, it is not required for participation in CFO.

One respondent requested clarification regarding the provision that contract participants be required to comply with ''such other terms as the Secretary may require.'' The respondent wanted an indication of what ''other terms'' might mean.

Response: CCC adds this language to ensure that it is not constrained by the regulation if future conditions change. An example of this may be a change in programs that are incorporated into CFO.

Annual Payments

Three respondents commented on the program funding level. These comments were not directed to the proposed rule itself, and therefore were not considered in the development of this final regulation. One respondent liked the overall concept of one payment. One respondent commented that the proposed rule provided limited information on the amount participants could earn for the practices that may be implemented.

Response: Section 1468.23 has been revised to clarify how payments are calculated. The CCC cost-share payment to a participant will be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

Appeals

One respondent recommends that decisions made by the State Conservationist on whether to accept innovative technologies, practices and systems should be appealable.

Response: The decision on whether to accept or reject innovative technologies is appealable. For information on the appeal process, consult 7 CFR Parts 11 and 614.

One respondent expressed that this section needs clarification.

Response: This final regulation adopts as final, the language in section 1468.30 which clarifies the appeal process.

One respondent requested adding an appeal process at the national level for cases where an innovative practice was wrongly denied.

Response: The decision on whether to accept or reject innovative technologies is appealable. For information on the appeal process, consult 7 CFR Parts 11 and 614.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1468 to read as follows:

PART 1468—CONSERVATION FARM OPTION

Subpart A—General Provisions

Sec.

1468.1 Purpose.
1468.2 Administration.
1468.3 Definitions.
1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.
1468.5 General provisions.
1468.6 Practice eligibility provisions.
1468.7 Participant eligibility provisions.
1468.8 Land eligibility provisions
1468.9 Conservation farm plan.

Subpart B—Contracts

1468.20 Application For CFO program participation.
1468.21 Contract requirements.
1468.22 Conservation practice operation and maintenance.
1468.23 Annual payments.
1468.24 Contract modifications and transfers of land.
1468.25 Contract violations and termination.

Subpart C—General Administration

1468.30 Appeals.
1468.31 Compliance with regulatory measures.
1468.32 Access to operating unit.
1468.33 Performance based upon advice or action of representatives of CCC.
1468.34 Offsets and assignments.
1468.35 Misrepresentation and scheme or device.

Authority: 16 U.S.C. 3839bb.

Subpart A—General Provisions

§ 1468.1 Purpose.

(a) Through the Conservation Farm Option (CFO), the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns, water quality protection or improvement; wetland restoration and protection; wildlife habitat development and protection; and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. The Natural Resources Conservation Service (NRCS) may provide technical assistance, upon request by the producer or landowner.

(b) The CCC provides a single contract and annual payments for implementation of innovative and environmentally-sound methods for addressing natural resource concerns for producers of wheat, feed grains, cotton, and rice, resulting in consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program cost-share agreements (WRP), and the Environmental Quality Incentives Program (EQIP). CFO participation is determined through two step process: first, the Chief, with FSA concurrence, selects CFO pilot project areas based on proposals submitted by the public; then CCC accepts applications from eligible producers or owners within the selected pilot project area.

§ 1468.2 Administration.

(a) CFO is carried out using Commodity Credit Corporation funds and will be administered on behalf of CCC by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS will:

(1) Provide overall program management and implementation for CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates consistent with EQIP, CRP, and WRP payment rates;

(4) Make funding decisions and determine allocations of program funds, with FSA concurrence;

(5) Determine eligibility of practices;

(6) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

(c) FSA will:

(1) Be responsible for the administrative processes and procedures including applications, contracting, and financial matters, such as payments to participants, assistance in determining participant eligibility, and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA will cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer or owner in an approved pilot project area who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation farm plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS Field Office Technical Guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and take advantage of opportunities, at a conservation management system level. In the conservation farm plan, the needs of the client, the resources, and Federal, state, Tribal, and local requirements will be met.

Conservation practice means a specified treatment, such as structural, vegetative, or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Farm Service Agency County Committee means a committee elected by the agricultural producers in the county or area, in accordance with Sec. 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The guide contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. A copy of the guide for that area is available at the appropriate NRCS field office.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Innovative technology means the use of new management techniques, specific treatments, or procedures such as structural or vegetative measures used in field trials or as interim conservation practice standards that have the purpose of solving or reducing the severity of natural resource use problems or that take advantage of resource opportunities. Innovative technologies used by program participants must be able to achieve the required level of resource protection.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, wildlife management, resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to CFO implementation.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to a CFO contract.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State technical committee means a committee established by the Secretary in a state pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.

(a) CCC may periodically solicit proposals from the public to establish pilot project areas in the **Federal Register**.

(b) Pilot projects may involve one or more participants. Each owner or producer within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO. This pilot project area may be a watershed, a subwatershed, an area, or an individual farm that can be geographically described and has specific environmental sensitivities or significant soil, water, and related natural resource concerns. The pilot project area must have acreage enrolled in a production flexibility contract, which is authorized by the Agricultural Marketing and Transition Act of 1996. After these pilot project area proposals are received, the Chief, with FSA concurrence, will select proposals for funding.

(c) CCC will select pilot project areas based on the extent the individual proposal:

(1) Demonstrates innovative approaches to conservation program delivery and administration;

(2) Proposes innovative conservation technologies and system;

(3) Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;

(4) Ensures effective monitoring and evaluation of the pilot effort;

(5) Considers multiple stakeholder participation (partnerships) within the pilot area;

(6) Provides additional non-Federal funding; and

(7) Addresses the following:

(i) Conservation of soil, water, and related natural resources,

(ii) Water quality protection or improvement,

(iii) Wetland restoration and protection, and

(iv) Wildlife habitat development and protection,

(v) Or other similar conservation purposes.

§ 1468.5 General provisions.

(a) Program participation is voluntary.

(b) Participation in the CFO is limited to producers of wheat, feed grains, cotton, or rice who have a production flexibility contract, in accordance with part 1412 of this chapter, on the farm enrolling in CFO and who are eligible for either CRP (7 CFR part 1410), EQIP (7 CFR part 1466), or WRP (7 CFR part 1467).

(c) The participant is responsible for the development of a conservation farm plan for the farm or ranch and may request assistance from NRCS or a third party in writing both the conservation farm plan and installing the practices outlined within the plan. Conservation practices in the conservation farm plan that would have been eligible for payment under CRP, EQIP, or cost-share agreements under WRP are eligible for CFO payment. The provisions for determining eligibility for payment and the calculation of payment under CFO will be similar to those specified for the eligible conservation practices under CRP, EQIP, or cost-share agreements under WRP. For land retirement payments, the CRP payment schedule in effect for the applicable soils at the time the CFO contract is signed will be utilized. CCC will provide annual payments to a participant for such conservation practices as specified in the time schedule set forth in the conservation farm plan.

§ 1468.6 Practice eligibility provisions.

(a) Practices may be eligible for payment under CFO if the conservation practice specified in the conservation farm plan is determined to be an eligible practice, as determined by the Chief, in accordance with:

(1) 7 CFR part 1410 for land retirement rental payments and practices that are eligible under CRP;

(2) 7 CFR part 1467 for wetland restoration or protection practices that are eligible under WRP; or

(3) 7 CFR part 1466 for conservation practices that are eligible under EQIP.

(b) For practices that are installed on retired land, the CRP cost-share rate for practices must be utilized.

§ 1468.7 Participant eligibility provisions.

Participants in the CFO must at the time of enrollment:

(a) Have a production flexibility contract in accordance with part 1412 of this chapter on the farm enrolling in CFO.

(b) Agree to forgo earning future payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program cost-share payments authorized by part 1467 of this chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO for the term of the CFO contract.

(c) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(d) Have control of the land for the term of the proposed contract period;

(1) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(2) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.

(3) If the applicant is a landowner, the landowner is presumed to have control.

(e) Submit a proposed conservation farm plan to CCC that is in compliance with the terms and conditions of the program. To receive payment under the CFO, the participant must also meet the eligibility requirements, as determined by the Chief, in:

(1) 7 CFR part 1410 if the land retirement rental payment and practice determined eligible in accordance with § 1468.6(a);

(2) 7 CFR part 1467 if the wetland restoration or protection practice was determined eligible in accordance with § 1468.6(b), or

(3) 7 CFR part 1466, if the conservation practice was determined eligible in accordance with § 1468.6(c).

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.

(5) Supply information as required by CCC to determine eligibility for the program.

(6) Comply with all the provisions of the CFO contract which includes the conservation farm plan approved by the local conservation district.

§ 1468.8 Land eligibility provisions.

Land may be eligible for enrollment in CFO, if CCC determines that the farm or ranch is enrolled in a production flexibility contract, authorized by the Agricultural Marketing Transition Act of 1996 and if the land upon which the CFO conservation practice, will be applied is determined to be eligible land as determined by the Chief, in accordance with:

(a) 7 CFR part 1410, if the practice was determined an eligible land retirement rental payment and cost-share practice similar to CRP in accordance with § 1468.6(a);

(b) 7 CFR part 1467, if the practice was determined an eligible wetland restoration or protection practice similar to WRP in accordance with § 1468.6(b); or

(c) 7 CFR part 1466, if the practice was determined an eligible conservation practice similar to EQIP in accordance with § 1468.6(c).

§ 1468.9 Conservation farm plan.

(a) The conservation farm plan forms the basis of the CFO contract. Prior to contract approval, a conservation farm plan must be written and approved. In deciding whether to approve a conservation farm plan, CCC may consider whether:

(1) The participant will use conservation practices to solve the natural resource concerns that will maximize environmental benefits per dollar expended, and

(2) The conservation practice would have been eligible for enrollment in the CRP, EQIP, or under the WRP cost-share agreements.

(b) The conservation farm plan for the farm or ranch unit of concern shall:

(1) Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contact period;

(2) Address the resource concerns identified in the CFO pilot project area proposal;

(3) Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;

(4) Ensure that net environmental benefits under a CRP contract are maintained or exceeded for the whole farm, as constituted by FSA, when terminating a CRP contract and enrolling in a CFO contract; and

(5) Meet the objectives of the pilot project area.

(c) The conservation farm plan is part of the CFO contract.

(d) The conservation farm plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(e) Participants are responsible for implementing the conservation farm plan in compliance with this part.

(f) Upon a participant's request, the NRCS may provide technical assistance to a participant.

(1) Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(2) Technical and other assistance provided by qualified personnel not affiliated with NRCS may include, but not limited to: conservation planning; conservation practice survey, layout, design, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists.

(g) All conservation practices scheduled in the conservation farm plan are to be carried out in accordance with the applicable NRCS Field Office Technical Guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS Field Office Technical Guide.

(h)(1) To simplify the conservation planning process for the participant, the conservation farm plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, state, Tribal, or local government program or regulatory requirements. CCC development or approval of a conservation farm plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by a non-USDA agency, except as agreed to by the participant and the relevant Federal, state, local or tribal entities.

(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation farm plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO program participation.

(a) Any eligible owner or producer within an approved pilot project area may submit an application for participation in the CFO to a service center or other USDA county or field office(s) of FSA or NRCS, where the pilot project area is located.

(b) CCC will accept applications throughout the fiscal year. CCC will rank and select the offers of applicants periodically, as determined appropriate by the State Conservationist. The application period will begin after a pilot project area has been approved.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a pilot project area which consists of more than one owner or producer. NRCS will prioritize applications from the same pilot project area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and designated FSA official, will approve for funding the application in a pilot project area based on eligibility factors of the applicant and the NRCS ranking.

(d) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. An applicant has the option of offering and accepting less than the maximum program payments allowed, offering to apply more conservation practices to the land in order to increase the likelihood of being enrolled. In evaluating the applications, the designated conservationist will take into consideration the following factors:

(1) Soil erosion;

(2) Water quality;

(3) Wildlife benefits;

(4) Soil productivity;

(5) Conservation compliance considerations;

(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;

(7) State water quality priority areas;

(8) The environmental benefits per dollar expended; and

(9) The degree to which application is consistent with the pilot project proposal.

(e) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements.

(a) In order for an applicant to receive annual payments, the applicant must enter into a contract agreeing to implement a conservation farm plan. The FSA county committee, with NRCS concurrence, will use the NRCS ranking consistent with the provisions of § 1468.20 and grant final approval of the contract.

(b) A CFO contract will:

(1) Incorporate by reference all portions of a conservation farm plan applicable to CFO;

(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;

(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would tend to defeat the purposes of the contract, or reduce net environmental and societal benefits;

(ii) Refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract, in accordance with the provisions of § 1468.25 of this part;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, in accordance with the provisions of § 1468.24 of this part;

(iv) Agree to forego participation in CRP, EQIP, and the cost-share agreements under WRP, along with future payments associated with these programs, with regard to the land under the CFO contract;

(v) Supply information as required by CCC to determine compliance with the contract and requirements of the program;

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices in accordance with the provisions of § 1468.22 of this part, and

(5) Include any other provision determined necessary or appropriate by CCC.

(c) There is a limit of one CFO contract at any one time for each farm, as constituted by FSA.

(d) The contract will incorporate the operation and maintenance of conservation practices applied under the contract, including those practices transferred from terminated CRP and EQIP contracts and WRP cost-share agreements. For persons wishing to transfer from CRP, EQIP, or WRP to CFO, practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the conservation farm plan.

(e) Acreage that is subject to a WRP easement will not be included in the CFO contract.

(f) Upon completion, the participant must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract.

§ 1468.22 Conservation practice operation and maintenance.

(a) The participant will operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the conservation farm plan. Conservation practices installed before the execution of a CFO contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the lifespan of the practice as specified in the contract to ensure that the operation and maintenance is occurring.

(b) For those persons who are signatories to existing CRP or EQIP contracts, or WRP cost-share agreements, practices will be transferred from EQIP and CRP contracts or WRP cost-share agreements, as agreed upon in the CFO conservation farm plan and CFO contract. Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

§ 1468.23 Annual payments.

(a) CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant for that practice as specified in:

(1) Part 1410 of this chapter, if the practice is a land retirement rental payment or cost-share practice which would have qualified for payment under CRP in accordance with § 1468.6(a);

(2) Part 1467 of this chapter, if the practice is a wetland restoration or protection practice which would have qualified for payment under WRP which was determined eligible in accordance with § 1468.6(b);

(3) Part 1466 of this chapter, if the practice was a conservation practice which would have qualified for payment under EQIP which was determined eligible in accordance with § 1468.6(c);

(b) The maximum amount of annual payments which a person may receive under the CFO for any fiscal year shall not exceed the total of the amounts calculated in accordance with paragraph (a) of this section after being limited as follows:

(1) The payment calculated in accordance with paragraph (a)(1) of this section is limited in accordance with CRP payment limitation provisions set forth in part 1410 of this chapter.

(2) The payment calculated in accordance with § 1467.9(a)(2) of this chapter is not limited.

(3) The payment calculated in accordance with § 1466.23(a)(3) of this chapter is limited in accordance with EQIP payment limitation provisions in § 1466.23(b) of this chapter.

(c) The regulations set forth at part 1400 of this chapter will be applicable in making payment eligibility determinations for CFO and in making person determination as they apply to the limitation of payments determined in accordance with paragraph (b) of this section.

(d) The CCC cost-share payments to a participant shall be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

(e) A landowner or producer that enrolls in CFO and terminates a CRP or EQIP contract or WRP cost-share agreement will be eligible to receive payments for practices which have been determined, established, or completed by the technical agency under those contracts or agreements. Once the CFO contract is effective, all payments for practices, including any practice transferred from the terminated contract agreement will be made under the CFO contract, except for payments already earned under prior contracts or cost-share agreements.

(f) Payments will not be made to a participant who has applied or initiated the application of a conservation practice for the purposes of CFO prior to approval of the CFO contract.

(g) When requested by the State Conservationist on a case-by-case basis, the Chief may approve, based upon availability of funding, cost share on the reapplication of a practice to replace or repair practice destroyed by unusual circumstances beyond the control of the landowner.

(h) The participant and NRCS must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract before the CCC will approve the payment of any cost-share, incentive, or land retirement payment.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements and is approved by the conservation district.

(b) The participant may agree to transfer a contract to another eligible owner or operator with the agreement of CCC. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract. By agreeing to participate in CFO, CCC may require operation and maintenance of those conservation practices installed under CRP, EQIP, or WRP.

(c) CCC may require a participant to refund all or a portion of any assistance earned under a CRP or EQIP contract, or WRP cost-share agreement that was terminated as a condition of participation in CFO, if the participant sells or loses control of the land under a CFO contract and the new owner or controller does not assume responsibility under the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If it is determined that a participant is in violation of the provisions of this part, or the terms of the contract including portions of the contract that incorporate transferred obligations from CRP or EQIP contracts, or WRP cost-share agreements, CCC will give the participant written notice of a reasonable time to correct the violation and comply with the terms of the contract and attachments thereto, as determined by the FSA county committee, in consultation with NRCS. If a participant continues in violation after the time to comply has elapsed, the FSA county committee may, in consultation with NRCS, terminate the CFO contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information, filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1468.35 of this part, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest, determined in accordance with part 1403 of this chapter. CCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract for any reason stated above, before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good-faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract without penalty, if CCC determines that such termination would be in the public interest.

Subpart C—General Administration

§ 1468.30 Appeals.

(a) An applicant or participant may obtain administrative review of an adverse decision made with respect to this part and the CFO contract in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) CCC funding allocations;

(2) Eligible conservation practices;

(3) Payment rates, and cost-share percentages;

(4) Science-based formulas and factor values;

(5) Soils mapping and information; and

(6) Other matters of general applicability.

§ 1468.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1468.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.

§ 1468.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such applicant or participant with respect to CFO contracts.

Signed in Washington, D.C. on September 23, 1998.

Pearlie S. Reed,

Vice President, Commodity Credit Corporation.

[FR Doc. 98–25923 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1726

Year 2000 Compliance: Electric Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule amends the regulations of the Rural Utilities Service (RUS) to state that RUS will make an electric loan only if the borrower's electric system is year 2000 compliant. The interim rule will ensure that RUS-financed projects and RUS financed electric systems meet the year 2000 date changeover without service or revenue disruption.

DATES: This rule is effective September 29, 1998. Comments must be received by RUS or carry a postmark or equivalent by November 30, 1998.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., STOP 1560, Room 4037, South Building, Washington, DC., 20250–1560. RUS requires a signed original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., STOP 1560, Room 4037, South Building, Washington, DC., 20250–1560. Telephone: (202) 720–9545. Facsimile: (202) 690–0717.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

It is the policy of the Department of Agriculture that proposed rules relating to public property, loans, grants, benefits, or contracts be published for public comment notwithstanding the provisions of 5 U.S.C. 553, with respect to such rules. However, exemptions are permitted where an agency finds, for good cause, that an opportunity for comments would be impracticable, unnecessary, or contrary to the public interest.

RUS finds that good cause exists to implement this rule without providing a prior opportunity for public comment. Many computers that control electric systems are not programmed to handle the change of date from December 31, 1999, to January 1, 2000. These ''non-compliant'' computers may malfunction on or before January 1, 2000, with potentially widespread and catastrophic results. Computer controlled electric systems could fail causing electric power delivery to consumers and suppliers to be interrupted, and electric system safety could be adversely affected. Examples of potentially vulnerable areas include power plant control systems, transmission and distribution relays, substation metering, load management systems, maintenance and administration systems and billing records. Failure of electric systems could affect public health and safety.

RUS, therefore believes it would be contrary to the public interest to delay the effectiveness of the rule. Through this interim rule, RUS is undertaking to address with its electric borrowers year 2000 compliance issues that may potentially disrupt electric services that are critical to public health and safety. This rule is part of an effort by all USDA Rural Development agencies to address year 2000 readiness and prevent year 2000 problems. For these reasons, RUS determines that publication for advance notice and an opportunity for prior comment is not in the public interest.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034), determined RUS loans and loan guarantees are not covered by this Executive Order.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) In accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule.