

§ 1468.21

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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.