

§ 752.8

7 CFR Ch. VII (1-1-03 Edition)

§ 752.8 Water bank program agreement.

(a) An agreement shall be executed for each participating farm. The agreement shall be signed by the owner of the designated acreage and any other person who, as landlord, tenant, or share cropper, will share in the payment or has an interest in the designated acreage.

(b) There may be more than one agreement for a farm.

(c) Each agreement shall be signed by a member of the county committee on behalf of the Secretary.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.9 Agreement period.

(a) The agreement period shall be 10 years. The agreement shall become effective on January 1 of the year in which the agreement is approved except that the agreement shall become effective on January 1 of the next succeeding year in cases where, at the time the agreement is approved, the county committee determines that the agreement signers will be unable to comply with the provisions of § 752.7 relating to the use of designated acreage in the year in which such agreement is approved.

(b) Subject to a modification of payment rates and such other provisions which may be determined to be desirable, agreements may be renewed for additional periods of 10 years each.

§ 752.10 Awarding water bank agreements.

(a) Persons wishing to be considered for an agreement shall file a request with the county committee indicating the acreage which is to be designated under the agreement. In order to be eligible for participation in the program, such persons must agree to designate: (1) 2 or more acres of types 3 through 7 wetlands, and (2) a total of at least 10 acres consisting of types 1 through 7 wetlands or adjacent land, or any combination thereof, identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the farm is located. In addition, the Soil Conservation Service (SCS) must certify that

the designated acreage constitutes a viable wetland unit, contains sufficient adjacent land to protect the wetland, and provides essential habitat for the nesting, breeding or feeding of migratory waterfowl. An acreage of less than 10 acres may be designated if the SCS representative recommends acceptance of the acreage and certifies that the area offered for agreement is a good, viable wetland unit and that the acceptance of the acreage would be in accord with the purposes of the program.

(b) Persons desiring to participate in the program may agree to designate any additional amount to types 1 through 7 wetlands and adjacent land. However, the maximum acreage of adjacent land which is designated under the agreement with respect to which payment shall be based cannot exceed four times the total acreage of types 3 through 7 wetlands which is designated under the agreement. This maximum acreage restriction may be waived by the State committee if such waiver would further the program objectives.

(c) Where funds allocated to the county do not permit accepting all requests which are filed, the county committee may limit the approval of requests for agreements in accordance with instructions issued by the Deputy Administrator.

§ 752.11 Responsibility of agreement signers.

(a) The owner of the designated acreage is responsible for compliance with the agreement and for any refunds or deductions for failure to comply fully with the terms of the agreement while a party to such agreement.

(b) Each other person signing the agreement is jointly and severally responsible with the owner for compliance with the agreement and for any refunds or payment reductions which may be required for failure to comply fully with the terms of the agreement while a party to such agreement.

§ 752.12 Provisions relating to tenants and sharecroppers.

(a) No agreement shall be approved if it appears that the owner, landlord, or

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operator has (1) not afforded the tenants and sharecroppers having an interest in the designated acreage an opportunity to participate in the program, or (2) adopted any device or scheme for the purpose of depriving any tenant or sharecropper of their payment or any other right under the program.

(b) The agreement shall be deemed to be in noncompliance if any of the conditions set forth in paragraph (a) of this section occur after the approval of the agreement.

§ 752.13 Determination of compliance.

(a) Determination of the acreage designated under the agreement shall be made in accordance with part 718 of this chapter, as amended.

(b) A representative of the county or State committee or any authorized representative of the Secretary shall have the right at any reasonable time to enter a farm concerning which representations have been made on any forms filed under the program in order to measure the designated acreage, to examine any records pertaining thereto, and to otherwise determine the accuracy of any representations and the performance of any obligations by the signatories of a WBP agreement.

§ 752.14 Annual payments.

(a) Persons on the farm having an interest in the designated acreage shall be eligible for an annual payment.

(b) The annual per acre payment rates for wetlands and for adjacent land shall be those rates which are recommended by the county and State committee and approved for each county by the Deputy Administrator. If the wetlands are subject to a drainage easement with the United States Department of the Interior or a state governmental entity, the payment rates for such wetlands will be 80 percent of the approved county rates which are applicable to wetlands in the county. A listing of all approved rates shall be available for inspection at the county FSA office.

(c) The payment shall be divided among the owner of the designated acreage and any other person having an interest in such acreage, including tenants and sharecroppers, in the man-

ner agreed upon by them as representing their respective contributions to compliance with the agreement. The county committee shall refuse to approve an agreement if it determines that the proposed division of payment is not fair and equitable. The annual payment and the division of the payment shall be specified in the agreement.

§ 752.15 Adjustment of annual rates.

(a) The county committee shall reexamine the payment rates with respect to each agreement at the beginning of the fifth year of any ten-year initial or renewal period and before the renewal period expires.

(b) An adjustment in the payment rates shall be made for any initial or renewal period taking into consideration the current land rental rates and crop values in the area. No adjustment shall be made in a payment rate which will result in a reduction of an annual payment rate from the rate which is specified in the initial agreement.

§ 752.16 Refunds or forfeitures for non-compliance.

(a) Except as otherwise provided in paragraph (b) of this section, no payment shall be made to any person for any year with respect to any agreement for which it is determined that for such year:

(1) There has been a failure to maintain the wetland character of the designated acreage and devote the adjacent land to the use specified in the agreement as provided in § 752.7. (a);

(2) There has been a failure to comply with the prohibition against draining, burning, filling, or otherwise using the designated acreage in a manner which would destroy the wetland character of the acreage as provided in § 752.7 (b);

(3) There has been a failure to comply with the prohibition against using the designated acreage as a dumping area for draining other wetlands as provided in § 752.7 (c);

(4) There has been a failure to comply with the prohibition against using the designated acreage as a source of irrigation water or as acreage for a set-aside, land diversion, acreage reduction or other program, or to meet the conserving base acreage requirement for