

SUBCHAPTER D—SPECIAL PROGRAMS

PART 750—SOIL BANK

EDITORIAL NOTE: Part 750 (formerly part 485 of title 6), published at 21 FR 6289, Aug. 22, 1956, and redesignated at 26 FR 5788, June 29, 1961, is no longer carried in the Code of Federal Regulations. This deletion does not relieve any person of any obligation or liability incurred under these regulations, nor deprive any person of any rights received or accrued under the provisions of this part. For FEDERAL REGISTER citations affecting this part, see the "List of CFR Sections Affected, 1949-1963, 1964-1972, and 1973-1985," published in seven separate volumes.

PART 752—WATER BANK PROGRAM

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AUTHORITY: Secs. 2-12, 84 Stat. 1468-1471, as amended (16 U.S.C. 1301-1311).

SOURCE: 48 FR 45528, Oct. 6, 1983, unless otherwise noted.

§ 752.1 Program objective.

(a) The regulations in this part set forth the terms and conditions for the Water Bank Program. The Secretary is authorized to enter into agreements and make payments to eligible persons in important migratory waterfowl nesting and breeding areas. Specified wetlands identified for the conservation of water or related uses on a conservation plan shall be developed in cooperation with the Soil and Water Conservation District in which the lands are located.

(b) The objective of the Water Bank Program (hereinafter referred to in this part as the "program") is to preserve, restore, and improve the wetlands of the Nation, and thereby: (1) Conserve surface waters, (2) preserve and improve habitat for migratory waterfowl and other wildlife resources, (3) reduce runoff, soil and wind erosion, (4) contribute to flood control, (5) contribute to improved water quality and reduce stream sedimentation, (6) contribute to improved subsurface moisture, (7) reduce acres of new land coming into production and to retire lands now in agricultural production, (8) enhance the natural beauty of the landscape, and (9) promote comprehensive and total water management planning.

§ 752.2 Definitions.

(a) *Adjacent land* means land on a farm which adjoins designated types 1 through 7 wetlands and is considered essential for the protection of the wetland or for the nesting, breeding, or feeding of migratory waterfowl. Adjacent land need not be contiguous to the land designated as wetland, but cannot be located more than one quarter of a mile away. Types 1 and 2 wetlands may be designated as adjacent land rather than wetland if located not more than one quarter mile from types 3 through 7 wetlands.

(b) *Administrator* means the Administrator or Acting Administrator of the

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Farm Service Agency (FSA), U.S. Department of Agriculture.

(c) *Agreement* means a water bank agreement.

(d) *Conservation plan* means a written record of the land user's decisions on the use and management of the wetland and adjacent areas covered by the agreement. The conservation plan is the basis for the agreement. It includes a schedule of conservation treatment and management required to improve, protect, or restore the wetland and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement. Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

(e) *Wetlands* means the inland fresh areas described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

(f) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to FSA operation shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, part 719 of this chapter, as amended.

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

§ 752.3 Administration.

(a) The program will be administered under the general supervision of the Administrator, in consultation with the Secretary of the Interior or his designee, and shall be carried out in the field by FSA State and county committees.

(b) Members of county committees are authorized to approve water bank agreements on behalf of the Secretary of Agriculture.

(c) State and county committees do not have authority to modify or waive any of the provisions of these regulations, or any amendment, supplement, or revision thereto. They do not have authority to modify or waive any of the provisions of any agreement en-

tered into hereunder except to the extent specifically authorized in this part.

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

§ 752.4 Geographical applicability.

The program will be applicable in States and counties designated by the Deputy Administrator, State and County Operations, FSA (hereinafter referred to as the "Deputy Administrator") after consultation with the United States Fish and Wildlife Service, United States Department of the Interior.

§ 752.5 Eligible farm.

A farm is eligible for participation in the program if: (a) At the time the request for an agreement is filed, land on the farm is not covered by a Water Bank Program agreement; (b) the farm contains at least one of the types 3 through 7 wetlands which are identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the farm is located; and (c) the farm meets the other requirements specified in this part.

§ 752.6 Land eligible for designation.

(a) Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(b) Land eligible for designation must be: (1) Privately owned inland fresh wetland areas of types 1 through 7 of which at least 2 acres must be types 3 through 7 wetlands with respect to which, in the absence of inclusion in the program, destruction of the wetland character could reasonably be expected; (2) privately owned inland fresh wetland areas of types 1 through 7, which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or (3) other privately owned land which is adjacent to or within one quarter mile of designated types 1 through 7 wetlands and which is determined by the county committee to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

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(c) The following land is not eligible for designation: (1) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless: (i) The new ownership was acquired by will or succession as a result of the death of the previous owner, or (ii) the land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain. However a new owner shall not be prohibited from entering into an agreement if the person has operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period. The provisions of this subparagraph shall not prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this part.

(2) Land which is set aside or diverted under any other program administered by the Department of Agriculture.

(3) Land which is owned by the United States or a State or local government or political subdivision thereof.

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with § 752.7(g).

(5) Types 1 through 7 wetlands which are common to more than one farm unless the portion of a wetland area located on the farm which controls the potential outlet for drainage is placed under agreement. After an agreement has been approved for the farm controlling the outlet for drainage, an agreement may be entered into with any or all other farms for other portions of the common wetland area if all agreements have the same beginning date as the farm controlling the outlet for drainage.

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

§ 752.7 Use of designated acreage.

(a) The acreage designated under an agreement shall be maintained for the agreement period in a manner which

will preserve, restore or improve the wetland character of the land. Persons entering into an agreement shall devote the adjacent land to conservation uses as specified in the agreement.

(b) The designated acreage shall not be drained, burned, filled, or otherwise used in a manner which would destroy the wetland character of the acreage, except that the provisions of this paragraph shall not prohibit the carrying out of management practices which are specified in a conservation plan for the farm which is developed in cooperation with the Soil and Water Conservation District in which the farm is located.

(c) The designated acreage shall not be used as a dumping area for draining other wetlands. However, the county committee may authorize the use of the designated area to receive limited drainage waters upon a determination that such use is consistent with the sound management of wetlands and is specified in the conservation plan for the farm.

(d) The designated acreage shall not be used: (1) As a source of irrigation water or as acreage for a set-aside, land diversion, acreage reduction or other program, or (2) to meet the conserving base acreage requirement for any other program.

(e) No crop shall be harvested from the designated acreage and such acreage shall not be grazed, except as may be specified in the conservation plan for the farm except that the designated acreage may be grazed in the first year of the agreement period prior to the date the agreement is approved.

(f) During periods of severe drought, haying of the designated acreage may be approved under specified conditions which are prescribed by the Deputy Administrator in consultation with the Secretary of Interior or his designee.

(g) The harvesting of timber products may be permitted but only in accordance with a Forest Management Plan which is included in the conservation plan and which is approved by the State forester or equivalent State official.

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

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§ 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-

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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

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any other program as provided in § 752.7(d);

(5) There has been a failure to comply with the prohibition against harvesting a crop from or grazing the designated acreage as provided in § 752.7(e);

(6) There has been a failure to comply with the provisions relating to haying the designated acreage during periods of severe drought as provided in § 752.7(f);

(7) There has been a failure to comply with the provisions relating to the harvesting of timber products as provided in § 752.7(g); or

(8) There has been a failure to comply with the provisions relating to tenants and sharecroppers as provided in § 752.12.

(b) The regulations governing the making of payments when there has been a failure to comply fully with the provisions of the program, part 791 of this chapter, are applicable to the WBP.

(c) The agreement shall be terminated in any case in which the failure to comply with the provisions of this part requires a refund or forfeiture of the entire annual payment under the agreement for the year and it is determined that the failure to comply is of such a nature as to warrant termination of the agreement. If an agreement is terminated, the persons signing the agreement shall forfeit all rights to further payments under the agreement and shall refund all payments received under the agreement.

§ 752.17 Actions defeating purposes of program.

If the county committee with the concurrence of the State committee, or the State committee, finds that any person has taken any action which tends to defeat the purposes of the program, all or any part of the annual payment which otherwise would be due under the program may be withheld or be required to be refunded.

§ 752.18 Filing of false claims.

The making of a fraudulent representation by a person in the payment documents or otherwise for the purpose of obtaining a payment from the county committee shall render the person liable, in addition to any liability under

applicable Federal criminal and civil fraud statutes, for a refund of any payments received by such person as the result of the fraudulent representation.

§ 752.19 Depriving others of payments.

If the State committee finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation) which deprives any other person of a payment to which such person is otherwise entitled under the program, the State committee may withhold or require a refund of all or any part of the program payment which otherwise would be due to the person who employed such scheme or device.

§ 752.20 Modification of an agreement.

(a) Any reconstitution of farms shall be made in accordance with the regulations governing reconstitution of farms, part 719 of this chapter, as amended.

(b) If the farm is reconstituted because of purchase, sale, change of operation, or otherwise, the agreement shall be modified in accordance with instructions issued by the Deputy Administrator with respect to any reconstituted farm which contains all or any part of the original designated acreage. The modified agreement or agreements shall reflect the changes in the number of acres in any reconstituted farm, the designated acreage, interested persons, and division of payments. If persons who were not signatories to the original agreement are required to execute such modified agreement or agreements in accordance with the provisions of § 752.8, but such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated with respect to the designated acreage which is not continued in the program, and all unearned payments shall be forfeited or refunded to FSA. The annual payment for the year in which a reconstitution occurs shall not be considered earned unless the designated acreage is continued in the program and there is a compliance with the agreement for the full agreement year. The persons on the farm prior to the reconstitution who were signatories to the agreement

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shall be jointly and severally responsible for refunding the unearned payments previously made.

(c) Except with respect to a farm which is reconstituted, if the ownership or operation of the farm changes in such a manner that the agreement no longer contains the signatures of persons required to sign the agreement in accordance with § 752.8, the agreement shall be modified in accordance with instructions issued by the Deputy Administrator to reflect the new interested persons and new divisions of payments. If such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated and all unearned payments shall be forfeited or refunded. The annual payment for the year in which the change of ownership or operation occurs shall not be considered to have been earned unless the designated acreage is continued in the program and there is compliance with the agreement for the full agreement year. The persons on the farm prior to the change of ownership or operation who were signatories to the agreement shall be jointly and severally responsible for refunding the unearned payments previously made.

(d) The Deputy Administrator may authorize other agreement modifications which are determined to be desirable to carry out the purposes of the program or to facilitate its administration.

§ 752.21 Termination of agreements.

The Deputy Administrator may, by mutual agreement with the parties to the agreement, consent to the termination of an agreement where: (a) The operator of the farm is physically handicapped and could not reasonably be expected to comply with the terms and conditions of the agreement; (b) the operator is or was mentally unstable at the time of the signing of the agreement and could not reasonably be expected to comply with the terms and conditions of the agreement; (c) the parties to the agreement are unable to comply with the terms of the agreement as the result of conditions beyond their control; (d) compliance with the terms of the agreement would work a

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severe hardship on the parties to the agreement; or (e) termination of the agreement would be in the public interest. If an agreement is terminated in accordance with the provisions of this section, the annual payment for the year in which the agreement is terminated shall not be considered to have been earned unless there is compliance with the terms and conditions of the agreement for the entire calendar year.

§ 752.22 Transfer of interest in an agreement.

(a) If a person acquires an interest in the designated acreage during the period covered by an agreement, such person may, with the consent of the other parties to the agreement and with approval of the county committee, become a party to the agreement and share in payments thereunder. A person, by becoming a party to the agreement, shall be jointly and severally responsible with the other signatories to the agreement for compliance with the terms and conditions of the agreement. In addition, such person shall be liable for any payment reductions or refunds which may be required as the result of the failure to comply with the terms and conditions of such agreement after becoming a party to the agreement.

(b) If a signatory to an agreement ceases to have an interest in the designated acreage, such person thereby ceases to be a party to the agreement. However, such person will not be relieved of any liability for deductions and refunds for failure to comply with the terms and conditions of the agreement while a party to the agreement.

§ 752.23 Successors-in-interest.

In case of death, incompetency, or disappearance of any person, any payment due shall be paid to the successor as determined in accordance with provisions of the regulations in part 707 of this chapter, as amended.

§ 752.24 Agreement not in conformity with regulations.

If, after an agreement is approved by the county committee, it is discovered

that such agreement is not in conformity with the regulations as the result of a misunderstanding of the program procedures by a signatory to the agreement, a modification of the agreement may be made by mutual agreement. If persons who are currently eligible to execute the corrected agreement are unwilling to do so, the agreement shall be terminated and all payments paid or payable under the agreement shall be forfeited or refunded, except as may be allowed by the Deputy Administrator in accordance with the provisions of § 752.25.

§ 752.25 Performance based upon advice or action of county or State committee.

The provisions of part 790 of this chapter, as amended, relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this program.

§ 752.26 Setoffs and withholdings.

The regulations issued by the Secretary governing setoffs and withholdings, part 13 of this title, as amended, shall be applicable to this program.

§ 752.27 Debt collection.

Any debts arising under this program are governed with respect to their collection by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701) and the regulations found at chapter II of 4 CFR.

§ 752.28 Appeals.

Any person may obtain review of determinations affecting participation in this program in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§ 752.29 Payments not subject to claims.

Any payments due any person shall be determined and allowed without regard to State law and without regard to any claim or lien against any crop, or proceeds thereof, which may be asserted by any creditor, except as provided in § 752.26.

§ 752.30 Prohibition against payments.

The regulations in part 796 of this chapter prohibiting the making of payments to program participants who harvest or knowingly permit to be harvested for illegal use marijuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by them are applicable to this program.

§ 752.31 Delegation of authority.

No delegation herein to a State or county committee shall preclude the Administrator, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 752.32 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these Regulations (§§ 752.8, 752.10 and 752.13) under the provisions of 44 U.S.C. Chapter 35 and OMB number 0560-0062 has been assigned.

PART 755—REGIONAL PROGRAMS

Subpart—Appalachian Land Stabilization and Conservation Program

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AUTHORITY: Sec. 208, 79 Stat. 5, 12; 40 U.S.C. App. 1, 2, 203.