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the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required as a condition of the RCWP contract and will not be shown in the time schedules for implementing BMP's.

(e) Time schedules for implementing BMP's are to be provided in the participant's water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law.

(f) The Natural Resources Conservation Service will certify as to the technical adequacy of the water-quality plan.

(g) The soil conservation districts are to review and approve all water-quality plans and modifications.

§ 634.24 Cost sharing.

(a) The portion of BMP cost (including labor) to be cost shared shall be that part which the Secretary determines is necessary and appropriate. The value of land upon which BMP's are applied, or the participant's water rights, cannot be considered a part of the participant's share of the cost.

(b) The administering agency, in consultation with the county ASC committee(s), soil conservation district(s), and designated management agency will annually set maximum individual BMP cost-share levels for the project area. However, the Federal share of the cost of the contract cannot exceed 50 percent unless a variance has been granted.

(c) Recommended variances exceeding the 50 percent level must be in the public interest and based on the following criteria:

(1) The main benefits to be derived from measures are related to improving offsite water quality, and

(2) The matching share requirements would place a burden on the landowner or operator which would probably prevent him or her from participating in the program.

(d) BMP's to be cost shared must have a positive effect on water quality by reducing the amount of agricultural nonpoint source pollutants that enter a stream or lake.

(e) Cost sharing is not to be made available for:

(1) Measures installed primarily for bringing additional land into crop production, including but not limited to land clearing and brush removal;

(2) Measures installed primarily for increasing production on existing cropland, including but not limited to bedding, field ditches, open drains, and tile drains;

(3) Measures having flood protection as the primary purpose, including but not limited to open channels, clearing and snagging, and obstruction removal;

(4) Structural measures authorized for installation under Pub. L. 83–566.

(f) The Federal cost-share level is not to be reduced by the contribution of a State or subdivision thereof. Total payments from Federal, State, and local sources for a BMP may not exceed the total cost of that BMP.

§ 634.25 Contracting.

(a) To participate in RCWP, a landowner or operator must enter into a contract in which he or she agrees to apply his or her water-quality plan. Any person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract.

(b) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the administering agency.

(c) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The administering agency is to determine the acceptability of the evidence and maintain current ownership evidence in the contract file.

(d) RCWP contracts shall include the basic contract document, special provisions as needed, the participant's water-quality plan, schedule of operations, and any other data necessary.

(e) NRCS or its designee shall approve the technical adequacy of the RCWP contract and obtain the required signature of the participants. The NRCS or its designee will provide the contract to the administering agency for certification of fund availability and for execution.

(f) Participants shall install best management practices according to the specifications that are applicable at the time measures are installed.

(g) NRCS will provide technical assistance to participants for installing BMPs. The State Conservationist, NRCS, or its designee may enter into contracts with qualified soil conservation districts or others to provide technical assistance.

(h) The RCWP contract is to require BMPs to be operated and maintained by the participant at no cost to that administering agency.

(i) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(j) A land owner or operator may enter into a contract jointly (pooling ageement) with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(k) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

(1) Accomplishing the water-quality plan;

(2) Keeping the administering agency informed of their current mailing address;

(3) Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;

(4) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications;

(5) The operation and maintenance of BMPs installed during the contract period; and

(6) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(l) Unless otherwise approved by the Administrator, NRCS, and Administrator, EPA, the administering agency shall not enter into any new RCWP contracts after five (5) years of elapsed time from the date when RCWP funds are first made available to begin the project.

(m) Contracts may be terminated due to hardship by mutual agreement if the administering agency and the State Conservationist, NRCS, determine that such action would be in the public interest.

§ 634.26 Contract modifications.

(a) The administering agency may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, or water-quality programs.

(b) Requirements of active contracts may be waived or modified by the administering agency only if such waiver or modification is specifically provided for in these regulations. NRCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant's water-quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall best management practices when:

(1) The installed measure failed to achieve the desired results through no fault of the participant,

(2) The installed measure deteriorated because of conditions beyond the control of the participant, or

(3) Another BMP is substituted that will achieve the desired results.

(d) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion.

(e) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on the land unit that was transferred and the participant having control over such land: