TABLE. 1–1—Continued

Office [section 401(a)(4)]	Type of employee	Previously covered by chapter 71	FLRA must review COI & constitutional responsibilities [section 431(d)]
National Security Council	Title 5	Yes	Yes.
Office of Administration	Title 3/Title 5	Yes (Title 5 employees)	No.
Office of Management and Budget	Title 5	Yes	Yes.
Office of National Drug Control Policy	Title 5	Yes	Yes.
Office of Science and Technology Policy	Title 5	Yes	No.
Office of the US Trade Representative	Title 5	Yes	No.

3. Issues on Which Comments Are Requested

The FLRA is reviewing its current regulations to determine whether any modifications are necessary. As the review process continues, the FLRA is requesting comment on the following issues:

1. Appropriateness of Bargaining Units and Eligibility

Section 7112 of the Statute gives the FLRA the authority to determine the appropriateness of any unit. Section 7112(b) discusses the types of employees who shall not be included in an appropriate unit. Section 431(d)(1)(B) of the Act states that the Authority ''shall exclude [employees] from coverage'' if there are any conflict of interest or constitutional issues. Given the provision of section 7112, the implementing regulations found at 5 CFR 2421.14, as well as the requirements of section 431(d)(1)(B), are there factors that should be included in the FLRA's regulations to address the appropriateness of units in the EOP?

2. Remedies

Section 431(a) of the Act prohibits the FLRA from ordering reinstatement as a remedy. Sections 7118(a)(7) and 7105(a)(2)(I) of the Statute describe the remedial powers of the FLRA. Are there remedial powers of the FLRA, in addition to reinstatement, that should be examined in light of the Act's requirements?

3. Security Issues

The FLRA currently has the ability to investigate, prosecute, and adjudicate cases in which non-public information could be at issue or discussed. In addition to the precautions already taken in those cases, are there additional security concerns that the FLRA should consider in the drafting of its regulations?

4. Conflict of interest/Appearance of Conflict of Interest

Section 431(d)(1)(B)(i) of the Act requires the FLRA to exclude certain covered employees if the FLRA determines such an exclusion is required due to a conflict of interest or an appearance of a conflict of interest. Do the following examples create a conflict or an appearance of a conflict: (1) the FLRA Chair, General Counsel, and the members of the Federal Service Impasses Panel serve at the pleasure of the President, and therefore, are removable at will; or (2) that the Office of Management and Budget controls the FLRA's budget and the FLRA does not have so-called ''by-pass'' authority to allow it to request additional funds from the Congress? Are there other issues that the FLRA should consider in drafting its regulations?

5. Constitutional Issues

Section 431(d)(1)(B)(ii) of the Act requires the FLRA to exclude certain covered employees if the FLRA determines such an exclusion is required due to the President's or Vice President's constitutional responsibilities. An initial review by the FLRA of the Constitution and case law outlining the President and Vice President's constitutional responsibilities did not yield any constitutional issues that would require modification of current FLRA regulations. Are there any constitutional issues that should be considered by the FLRA in drafting the regulations?

6. Political Affiliation

Section 435(g) of the Act states that it:

> shall not be a violation of any provision of this chapter to consider, or make any employment decision based on, the party affiliation, or political compatibility with the employing office * * *.

Is there anything in the Statute or FLRA's current regulations that will conflict with section 435(g)?

7. Head of an Agency

Sections 7102(1), 7114(c)(1)—(3), and 7117(c)(3) of the Statute reference actions by the ''head of an agency.'' For the purposes of the EOP operations, who should be considered the ''head of an agency'' for each EOP office?

Solly Thomas,

Executive Director.

[FR Doc. 98–8649 Filed 4–1–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578–AA20

Conservation Farm Option

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Proposed 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) to establish 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 throughout the process by a Executive Vice President of the CCC who is the Administrator of the Farm Service Agency (FSA). The CCC is issuing a proposed rule for the CFO. This proposed rule describes how CCC will implement CFO as authorized by the 1985 Act. The CCC seeks comments from the public which will be used to make revisions, if necessary, that will be issued in a final rule.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to Gary R. Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. Attention: CFO. FAX: 202–720–1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.ftw.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: dan.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

Pursuant to Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action. It will not result in an annual effect on the economy of $100 million or more, and therefore is not an economically significant regulatory action. The administrative record is available for public inspection in Room 6037, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

Pursuant to Executive Order 12866, CCC conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Cost Benefit Analysis document prepared for this rule. The analysis estimates CFO will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. 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 or burden upon agricultural producers that choose not to participate.

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 has determined through an Environmental Assessment for the Conservation Farm Option Program, dated August 1, 1996, that the issuance of this proposed 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, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

This proposed rule sets forth procedures for implementing CFO. CCC needs certain information from potential applicants in order to carry out the requirements of the program. CCC submitted information collection requirements to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* FSA has requested reinstatement of OMB 0560–0174 which covers both CFO and EQIP. This package contains the forms necessary for program implementation and include Forms CCC–1200, CCC 1210, and CCC–1245.

Form CCC–1200 is the Conservation Program Contract used in both the CFO and Environmental Quality Incentive Program (EQIP) and allows a farmer, rancher, or landowner to apply for conservation benefits under the terms and conditions of the contract.

Form CCC–1210 is the Conservation Farm Option Pilot Proposal form used only in the CFO program and allows farmers, groups and other entities to propose geographic areas for inclusion as pilot areas in the CFO.

Form CCC–1245 is the Practice Approval and Payment Application used in both the CFO and EQIP and allows the participant to submit performance data in order to be paid for the practices installed by the participant under the program.

A regular information collection submission for CFO and EQIP is in clearance and a notice will be published in the **Federal Register** shortly.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed 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 proposed 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.

Discussion of Program

Background

Traditional agricultural conservation programs provide farmers and ranchers with cost share and land retirement payments as incentives to protect and conserve soil, water, and other natural resources, and provide technical assistance to implement conservation practices. In certain cases, however, these traditional programs lack sufficient flexibility to allow farmers and ranchers to operate in a manner they consider optimal or to address natural resource concerns which warrant innovative solutions. The CFO is intended to promote innovative and environmentally-sound methods for addressing these concerns.

Overview of the Conservation Farm Option Pilot Program

In accordance with the 1985 Act, CCC will establish CFO pilot programs for producers of wheat, feed grains, upland cotton, and rice. Only those owners and producers that have a farm with contract acres enrolled in production flexibility contracts established under the 1996 Act are eligible to participate in the CFO. Producers accepted into the CFO must enter into 10-year contracts which may be extended an additional 5 years. The purposes of CFO pilot programs include: (1) Conservation of soil, water, and related resources; (2) water quality protection or improvement; (3) wetland restoration, protection, and creation; (4) wildlife habitat development and protection; and (5) other similar conservation purposes. To enroll in the program, the 1985 Act requires producers to prepare a conservation farm plan which becomes part of the

CFO contract. The plan describes all conservation practices to be implemented and maintained on acreage subject to contract. An important goal is to promote the adoption of resource conserving crop rotations while maintaining agricultural production and maximizing environmental benefits. The 1985 Act also requires the plan to contain a schedule for the implementation and maintenance of the practices, comply with highly erodible land and wetland conservation requirements of Title XII of the 1985 Act, and contain such other terms as the Secretary may require. Producers must also agree to forgo payments under the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP). 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 owner or producer would have received had the owner or producer participated in the CRP, the WRP and the EQIP. CCC will determine the CFO payment rates taking into consideration the payments that would have been received under the CRP, WRP, and EQIP, as applicable. CRP payments will not exceed the maximum bid price accepted for similar land in the vicinity.

The CFO pilot program will substitute a single annual payment for the different types of payments available under the CRP, the WRP, and EQIP, provide an incentive for coordinated, long-term natural resource planning, and be flexible enough to allow farmers and ranchers to operate in economically efficient, but innovative ways. The CFO provides for a locally-led approach by allowing individual farmers and ranchers, or groups of farmers and ranchers to implement innovative solutions to natural resource problems and encourages implementation of sustainable agricultural production practices. The CFO is a program that permits farmers and ranchers to maximize environmental benefits with minimal land retirement, while maintaining agricultural production.

CCC will determine CFO participation in a two step process: First, CCC will select CFO pilot project areas based on proposals submitted by the public; then, CCC will accept applications from eligible producers within the selected pilot project area.

CFO Pilot Projects

CFO pilot projects will 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. CFO pilot projects are intended to be simple, flexible, and should encourage sustainable agricultural production practices and support locally led conservation goals.

CCC will select CFO pilot project areas based on the extent of the proposal:

1. Demonstrates innovative approaches to conservation program delivery and administration;
2. Demonstrates innovative conservation technologies and systems;
3. Creates environmental benefits in a cost effective manner;
4. Addresses conservation of soil, water, and related resources, water quality protection or improvement; wetland restoration, protection, and creation; and wildlife habitat development and protection;
5. Ensures effective monitoring and evaluation of the pilot effort;
6. Considers multiple stakeholder participation (partnerships) within the pilot area; and
7. Provides additional non-Federal funding.

An interdepartmental committee made up of representatives of several Federal agencies will review the proposals and make recommendations to the Chief, NRCS, who is a Vice President of the CCC, based on criteria available to the public in the CFO proposal package. The CFO proposal package includes the CFO Pilot Proposal Form CCC–1210, instructions for completion of the CCC–1210, and the criteria for evaluating proposals. The CFO proposal package is available from any FSA or NRCS office. CCC will give preference to proposals that have high ratings based on the criteria upon which proposals will be evaluated.

Pilot projects can involve either an individual or a group. In either case, to be considered for enrollment in CFO, each individual or entity within an approved pilot project area must submit an application which is the basis for the contract between the participant and CCC.

Pilot Project Area Proposal Submission

CCC requests recommendations from the public regarding establishment of pilot project areas for fiscal year (FY) 1998. In FY 1999 through FY 2002, the CCC may establish additional pilot projects, as funding allows. Pilot projects will be fully funded upon selection.

CFO proposals may be developed for a group of eligible producers by organizations or entities that desire to coordinate individual producer plan development and implementation activities. These group proposals may promote the adoption of sustainable farming or other conservation practices on several farms, thus, expanding the opportunity for greater acceptance of innovative and environmentally sound farming practices. Achievements from these efforts may serve as on-farm models to encourage others to accept new measures without government assistance. Moreover, groups participating will promote program success stories to enhance the CFO based on proven results.

The proposals for pilot project areas must be for the purpose(s) of conserving soil, water, and related resources; protecting or improving water quality; restoring, protecting and creating wetlands; developing and protecting wildlife habitat; or other similar conservation purposes.

An individual, organization, or entity submitting the proposal will be responsible for providing leadership in the overall local planning effort, including activities such as education, information delivery, monitoring and coordination with local agencies, States or subdivisions thereof, tribal, and Federal agencies.

Selection Of Participants Within Pilot Project Areas

Upon selection of pilot project areas, all producers with production flexibility contracts within the project area will be eligible to participate in the CFO. NRCS will approve CFO conservation farm plans and the local FSA office will approve the CFO contracts and make payments on behalf of CCC.

Participation in CFO projects is open to all production flexibility contract holders without regard to race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status.

List of Subjects in 7 CFR Part 1468

Administrative practices and procedures, Conservation plan, Contracts, Natural resources, Payment rates, Soil conservation, Technical assistance, Water resources, and Wetlands.

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.

Subpart B—Contracts

Subpart C—General Administration

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

Subpart A—General Provisions

§ 1468.1 Applicability.

Through the Conservation Farm Option, the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resources concerns, water quality protection or improvement; wetland restoration, protection, and creation; wildlife habitat development and protection and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. An important purpose is to promote the adoption of resource-conserving crop rotations while maintaining agricultural production and maximizing environmental benefits through the implementation of structural, vegetative, and land management practices on eligible land.

§ 1468.2 Administration.

(a) Administration of CFO is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

(1) Provide overall program management and implementation of the CFO;

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

(3) Establish annual payment rates;

(4) Make funding decisions and determine allocations of program funds;

(c) FSA shall be responsible for the administrative processes and procedures for applications, contracting, financial matters, program accounting and distribution of allocations;

(d) NRCS and FSA shall 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 shall apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer 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 plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water, including the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Conservation practice means a specified treatment, such as a structural or vegetative practice 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.

County Farm Service Agency Committee means a committee elected by the agricultural producers in the county or area, in accordance with § 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. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

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.

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, and wildlife habitat 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.

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 Program requirements

(a) Program participation is voluntary. The participant is responsible for the development of a conservation plan for the farm or ranching unit of concern. The participant's conservation plan is a part of the CFO contract. CCC will provide annual payments to a participant to apply needed conservation practices and land use adjustments as specified in a time schedule set forth in the conservation plan.

(b) To be eligible to participate in CFO, an applicant must have a production flexibility contract in accordance with part 1412 of this chapter.

(c) Participants in the CFO must:

(1) Agree to forgo payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program authorized by part 1467 of chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO.

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

(3) Have control of the land for the term of the proposed contract period.

(i) 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;

(ii) and 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.

(4) Submit a proposed conservation plan to CCC. When considering the acceptability of the plan, CCC will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended. The conservation practices must be eligible practices under CRP, WRP, or EQIP, or some other innovative conservation measure approved by the State Conservationist.

(5) 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;

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

(7) Comply with all the provisions of the CFO contract which includes the conservation plan approved by CCC.

(d) States, political subdivisions, and agencies thereof are not eligible to participate in CFO.

(e) Land may be eligible for enrollment in CFO if such land is otherwise eligible for the program and used as:

(1) Cropland;

(2) Rangeland;

(3) Pasture;

(4) Forest land;

(5) Other land on which crops or livestock are produced; and

(6) Other agricultural land that NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types, terrain, climate, soil, saline characteristics, or other factors or natural hazards, such as the existing agricultural management practices of the applicant.

(f) In addition to meeting the land eligibility requirements in paragraph(e) of this section, land may be only considered for enrollment in CFO if CCC determines that the land is:

(1) Privately-owned land;

(2) Publicly-owned land where—

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Installation of conservation practices will not primarily benefit the government landowner;

(iii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iv) The participant has provided CCC with written authorization from the government landowner to apply the conservation practices; or

(3) Tribal, allotted, or Indian trust land.

§ 1468.5 CFO Pilot project areas

(a)(1) CCC may solicit proposals from the public to establish pilot project areas.

(2) CCC shall select pilot project areas based on the extent the individual proposal:

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

(ii) Proposes innovative conservation technologies and system;

(iii) Proposes cost effective solutions to environmental concerns;

(iv) Ensures effective evaluation of the pilot effort; and

(v) Addresses the following:

(A) Conservation of soil, water, and related resources,

(B) Water quality protection or improvement,

(C) Wetland restoration, protection, and creation, and

(D) Wildlife habitat development and protection.

(b) Pilot projects may involve one or more participants. Each individual or entity within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO.

§ 1468.6 Conservation plan

(a) The conservation 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; and

(2) Address the resource concerns identified in the CFO Pilot Proposal through the methods, systems or practices specified in the CFO Pilot Proposal.

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

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

(c) The conservation 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.

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

(1) NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies, Indian tribes, or private agribusiness sector or organizations, in performing its responsibilities for technical assistance.

(2) Participants may, at their own cost, use qualified professionals 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.

(3) 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.

(e) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this part.

(f) All conservation practices scheduled in the conservation 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.

(g)(1) To simplify the conservation planning process for the participant, the conservation 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; and the CCC development or approval of a conservation plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by another 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 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 farmer or rancher 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 of FSA or NRCS.

(b) CCC will accept applications throughout the year. CCC will rank and select the offers of applicants periodically, as determined appropriate by CCC.

(c) CCC will develop ranking criteria to prioritize applications within a pilot project area; and will accept applications in a pilot project area based on eligibility factors of the applicant and this ranking.

(d) An applicant has the option of offering and accepting less than the maximum program payments allowed.

(e) CCC 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 plan which will meet the purposes of the program;

(3) An estimate of the cost of annual payments; and

(4) The environmental benefits per dollar expend;

(f) 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 shall enter into a contract agreeing to implement a conservation plan.

(b) A CFO contract shall:

(1) Incorporate by reference all portions of a conservation 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 attend to defeat the purposes of the contract, and reduce net environmental and societal benefits,

(ii) In accordance with the provisions of § 1468.25 of this part, 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.

(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, and

(iv) 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 identified with FSA number, determined at the time of the application for CFO assistance.

§ 1468.23 Annual payments.

(a) Annual payments, subject to the availability of funds, will be based on the value of the expected payments that would have been paid to the participant under CRP, WRP, or EQIP, as applicable.

(b) The participant must certify that a conservation practice is completed in accordance with the conservation plan to establish compliance with the contract.

§ 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 plan is revised in accordance with CCC requirements.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by CCC to be eligible and 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.

§ 1468.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or the provisions of this part, CCC may give the participant a reasonable time to correct the violation. If a participant continues in violation, CCC will terminate the CFO contract.

(2) Notwithstanding the provisions of (a)(1), a contract termination shall be effective immediately upon a determination by CCC, 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. The county FSA committee, in consultation with NRCS, 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 due to breach of contract or the participant voluntarily terminates the contract 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 if, based on CCC's determination that such termination would be in the public interest, CCC approves the termination.

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 2 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; and

(3) Other matters of general applicability.

§ 1468.31 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.

§ 1468.32 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 county FSA 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 by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.33 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.

§ 1468.34 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 March 26, 1998.

Pearlie S. Reed,

Vice President, Commodity Credit Corporation.

[FR Doc. 98–8505 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–16–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, and 126

HUBZone Empowerment Contracting Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to add to its regulations a new Part 126 to implement a new program entitled the ''HUBZone Empowerment Contracting Program'' (''hereinafter the HUBZone Program''). This program was created by the HUBZone Act of 1997, which is contained in Title VI of Public Law 105–135, enacted on December 2, 1997 (111 Stat. 2592). The proposed rule would set forth the program requirements for qualification as a HUBZone small business concern (HUBZone SBC), the federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program.

DATES: SBA must receive comments by no later than May 4, 1998.

ADDRESSES: You may submit your comments by first class mail to Michael McHale, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Assistant Administrator, Office of Procurement Policy and Liaison, (202) 205–6731.

SUPPLEMENTARY INFORMATION: Title VI of the Small Business Reauthorization Act of 1997, Public Law 105–135, December 2, 1997, creates a new program called the ''HUBZone Program''. The purpose of the HUBZone program is to provide federal contracting opportunities for certain qualified small business concerns (SBCs) located in distressed communities in an effort to promote private-sector investment and employment opportunities in these communities. Fostering the growth of federal contractors in these areas and ensuring that these contractors remain viable businesses for the long-term will help to empower these areas while not adversely affecting recent efforts to streamline and improve the federal procurement process.

The legislative history contains many strong indications that Congress wanted the SBA to implement the program in a manner that builds on the President's proposed Empowerment Contracting program (launched by Executive Order, May 21, 1996) and is consistent with the Federal government's other existing community empowerment programs-most notably the Empowerment Zone program. The legislative history also