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**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1464**

**[Docket ID NRCS-2019-0012]**

**RIN 0578-AA70**

**Regional Conservation Partnership Program**

**AGENCY:** Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule with request for public comment adds a new part to our regulations to implement the Regional Conservation Partnership Program (RCPP).

RCPP enhances conservation and promotes coordination between NRCS and its partners to help producers and landowners increase the restoration and sustainable use of soil, water, and wildlife on a regional or watershed scale. NRCS, an agency of the USDA, administers RCPP, which is funded through CCC. RCPP is reauthorized by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), which streamlined RCPP administration, including elimination of “covered program” financial transfers and replacement of covered program contracts with RCPP contracts and programmatic partnership agreements. Section 2504 of the 2018 Farm Bill authorizes NRCS to implement RCPP through an Availability of Program Funding (APF) announcement in FY 2019 without issuing a regulation. This interim administration authority expired September 30, 2019, and section 1271E(e) of the RCPP statute, as amended, requires

NRCS to administer RCPP through a regulation going forward. Therefore, NRCS is publishing this interim rule to incorporate the 2018 Farm Bill changes to RCPP program administration.

**DATES:** *Effective date:* **[Insert date of publication in the FEDERAL REGISTER].**

*Comment date:* Submit comments on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER].**

*Comment date for Environmental Review:* Submit comments on the draft Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of notice. You may submit comments by the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID NRCS-2019-0012. Follow the online instructions for submitting comments.

All written comments received will be publicly available on <http://www.regulations.gov>.

A copy of the draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from the following web site: <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmland/?cid=stelprdb1263599>. A hard copy may also be requested in one of the following ways:

- Via mail: [karen.fullen@usda.gov](mailto:karen.fullen@usda.gov) with “Request for EA” in the subject line; or

- A written request: Karen Fullen, Environmental Compliance Specialist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, ID 83709.

**FOR FURTHER INFORMATION CONTACT:** Michael Whitt; (202) 690-2267;

email: michael.whitt@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND:**

Section 2401 of the Agricultural Act of 2014 (the 2014 Farm Bill) originally established the Regional Conservation Partnership Program (RCPP) through adding a new subtitle I to Title XII of the Food Security Act of 1985. The 2014 Farm Bill authorized \$100 million in each fiscal year (FY) from FY 2014 through 2018 and made resources available through reserving seven percent of the funds or acres made available each year from covered programs, including the Agricultural Conservation Easement Program (ACEP), the Conservation Stewardship Program (CSP), the Environmental Quality Incentives Program (EQIP), and the Healthy Forests Reserve Program (HFRP).

RCPP promotes coordination between NRCS and its partners to deliver conservation assistance to producers and landowners. Under the 2014 Farm Bill, NRCS administered RCPP through APF notices posted to grants.gov. NRCS published APF notices in May 2014 for FY 2014–15 implementation, and then additional APFs for FY 2016, FY 2017, and FY 2018 utilizing funds that were made available under the 2014 Farm Bill. Eligible partners submitted proposals to one of three funding pools—the national pool, the State pool, and the Critical Conservation Area (CCA) pool. The Secretary of Agriculture designated eight CCAs in 2014.

Subtitle G of Title II of the Agriculture Improvement Act of 2018 (2018 Farm Bill; P.L. 115-334) made the following changes to RCPP program requirements:

- Increases RCPP funding to \$300 million for each fiscal year (FY 2019–23) in mandatory funding and removes the seven percent covered program funding authority.
- Authorizes RCPP program contracts rather than implementation of RCPP funding through covered program contracts, making RCPP a stand-alone program.
- Eliminates the national funding pool, thereby simplifying the application process for partners. NRCS will allocate 50 percent of the annual funding to State and multistate pools and allocate the remaining 50 percent of annual funding to CCAs.
- Adds and simplifies the definitions of “eligible land” and “eligible activities.” NRCS incorporates eligible activities available into its participant awards.
- Expands the scope of the program by including the authorities of the Conservation Reserve Program (16 U.S.C. 3831 - 3835) and the Watershed Protection and Flood Prevention Program (Pub. L. 566), excluding the Watershed Rehabilitation Program, in the definition of “covered programs.”
- Adds authority to enter into alternative funding arrangements or grant agreements with eligible partners depending on the specific requirements of the project. However, the 2018 Farm Bill limits NRCS to entering no more than 15 alternative funding arrangements each fiscal year.
- Expands the purpose of the program to include protection of drinking water and ground water on eligible land.

- Updates the definition of “eligible partners” to identify conservation districts and acequias specifically.
- Allows partnership agreements to be longer than 5 years in select situations, as determined by NRCS, to further purposes of the program.
- Allows partnership agreement renewals for a period of time not to exceed 5 years that in select situations may be funded through an expedited noncompetitive process.
- Allows a partnership agreement, or a renewal partnership agreement, to be extended one time for up to 12 months.
- Specifies that a project should: achieve one or more conservation benefits; specify the eligible activities to achieve those conservation benefits; and state the timeline for carrying out the project, including interim milestones and related conservation outcomes.
- Requires guidance for partners on how to quantify and report project outcomes, including achievement of conservation benefits.
- Updates reporting requirements and emphasizes the importance of reporting progress in achieving conservation benefits on a regular basis.
- Requires reporting publicly at the time of selection the amount of technical assistance (TA) that will be set aside for project implementation.
- Limits TA costs to those costs specific and necessary to carry out the objectives of the program and to develop and implement strategies to encourage third-party technical service providers (TSPs) to provide TA to eligible partners pursuant to a partnership agreement.

- Clarifies how eligible partners may make contributions, including through direct funding, in-kind support, or a combination of direct funding and in-kind support.
- Clarifies that, upon agency approval, amounts expended by an eligible partner for staff salaries or development of the partnership agreement between the announcement of the project award and the signing of the partnership agreement may be counted toward the partner contribution.
- Requires the Secretary to: establish a timeline for carrying out the duties under the program; identify a State program coordinator who will assist partners; establish guidance to assist partners with assessment requirements; provide partners (other than grant agreement partners) a semiannual report that contains the status of each pending and obligated contract under the project and an annual report describing how the Secretary used that fiscal year's TA; and ensure that any eligible activity effectively achieves the conservation benefits identified in an approved partnership agreement.
- Requires NRCS to implement RCPP through a simplified application process.
- Prohibits use of adjusted gross income criteria to determine eligibility for eligible partners.
- Gives high priority to partners that build new partnerships with local, State, and private entities or implement the project consistent with existing watershed, habitat, or other area restoration plans.
- Outlines the partner responsibilities under a grant agreement including contributing significant resources to achieving project goals, carrying out eligible activities on eligible land in agreement with producers to achieve conservation

benefits on a regional or watershed scale, and providing an annual report to NRCS that describes the status of the project.

- Includes outreach provisions for historically underserved producers and for eligible partners and producers in designated CCAs.
- Requires identification of one or more priority resource concerns that apply to each CCA.
- Requires selection of applications for partnership agreements under CCAs that address one or more priority resource concerns for which the CCA is designated.

### **Overview of Program Administration**

RCPP provides NRCS a valuable tool for coordinating the delivery of conservation assistance with that provided by partners. RCPP promotes coordination of NRCS conservation activities with partners that offer value-added contributions to expand the collective ability to address on-farm, watershed, and regional natural resource concerns. Through RCPP, NRCS seeks to co-invest with partners to implement projects that demonstrate innovative solutions to conservation challenges and provide measurable improvements and outcomes tied to the resource concerns they seek to address. The 2018 Farm Bill made substantive changes to the program, and RCPP is now a stand-alone program with authorized conservation activities as those offered by other NRCS programs, but with modifications and flexibilities unique to RCPP. These modifications and flexibilities enhance NRCS' ability to tailor its conservation assistance to the objectives of RCPP partners to a greater extent than is available through NRCS' other conservation programs.

NRCS provides RCPP assistance through partnership agreements, supplemental agreements, and program contracts. This interim rule provides information about RCPP and guidelines related to submitting proposals and applications for participation in RCPP. Project approval and development of partnership agreements are based on competitive evaluation, selection, and post-selection negotiations, on the basis of criteria established in this interim rule and any future notice of funding opportunity.

In particular, eligible partners must submit complete proposals through a competitive process. The following partners are eligible to submit a proposal and enter into a partnership agreement with NRCS: agricultural or silvicultural producer associations or other group of producers; States or units of local government; Indian Tribes; farmer cooperatives; institutions of higher education; conservation districts; water districts; irrigation districts; acequias; rural water districts or associations or other organizations with specific water delivery authority to producers on agricultural land; municipal water or wastewater treatment entities; organizations or other nongovernmental entities with an established history of working cooperatively with producers on agricultural land, as determined by the Chief of NRCS; and an organization described in section 1265A(3)(B) of the ACEP statute. The Agency will make available project summaries including partner contributions via the RCPP website at <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/rcpp/>.

NRCS reviews and evaluates the proposals based on the criteria set forth in this interim rule and as detailed in the annual APF. Consistent with statutory direction of the 2018 Farm Bill, priority consideration will be given to proposals that provide for outreach to and engagement of beginning farmers or ranchers, socially disadvantaged farmers or



ranchers, limited resource farmers or ranchers, veteran farmers and ranchers, and Indian Tribes within the area covered by the project. This interim rule also includes other statutory priorities, including projects that—

- Assist producers in meeting or avoiding the need for a natural resource regulatory requirement;
- Have a high percentage of producers in the area to be covered by the agreement;
- Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or national efforts;
- Build new partnerships with local, State, and private entities to include a diversity of stakeholders in the project;
- Deliver a high percentage of applied conservation to achieve conservation benefits or address the priority resource concern within a CCA;
- Implement projects consistent with existing watershed, habitat, or other area restoration plans;
- Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods; or
- Meet other factors that are important for achieving the purposes of the program, as determined by NRCS.

Proposals may not be adjusted after they have been submitted to NRCS for review and ranking. After a proposal is selected, NRCS enters into a negotiation with the lead partner to develop a partnership agreement that serves as an agreement governing the overall approach of the project. The identity of the lead partner, the overall funding amount, the general activity types (e.g., land management, rental,

entity-held easements) to be offered and the resource concerns addressed by the project are not subject to negotiation. Details on activities specific to a project (e.g., delineated practices under the land management activity type) and details on the approach for reporting on project outcomes are examples of items that are subject to negotiation.

There is no funding obligated through the partnership agreement unless the partnership agreement is an alternative funding arrangement or grant (collectively referred to as “alternative funding arrangement”). Consistent with the RCPP statute, any project management and producer outreach activities between the announcement of awards and the execution of partnership agreements can be counted as partner contributions, if such activities are included in the application. Based on available funding and agency priorities, NRCS may offer reduced funding from the amount requested in the application.

Under the partnership agreement, NRCS may enter into additional agreements under the project framework, including RCPP program contracts with producers and supplemental agreements with the lead partners or other eligible partners. Supplemental agreements include agreements for the delivery of technical assistance, easement agreements with eligible entities, and project-style agreements. These contracts and agreements are entered into separately in support of the approved project. The terms set by NRCS are not subject to negotiation. NRCS will manage these agreements according to NRCS-developed terms and conditions necessary to ensure program and financial integrity.

Following execution of the partnership agreement, producers within the approved project areas may apply directly to NRCS to enter into an RCPP program contract that encompasses eligible land or apply indirectly through the project partner. Producer participation is subject to competitive ranking, availability of funds, and NRCS reporting requirements. Eligible land includes any agricultural or nonindustrial private forest land or associated land on which NRCS determines an eligible activity would help achieve conservation benefits defined for each approved RCPP project's programmatic agreement.

Producers interested in applying for RCPP participation in an approved RCPP project must establish and maintain records about their operation at their local USDA service center. The NRCS designated conservationist or a partner representative may assist a producer to determine which implementation actions are appropriate based on the eligible activities the applicant seeks to install or perform to compete in an RCPP project funding opportunity, as detailed in the APF.

Under a program contract, NRCS may make a practice implementation payment, a stewardship payment, a rental payment for targeted conservation benefits, or an easement payment to secure the long-term protection of identified conservation benefits for perpetuity or for 30 years, when so limited under State law. Therefore, as described more fully below, while the term "program contract" is used for all such agreements between NRCS and an eligible producer, a program contract may be structured to be analogous to an EQIP contract or an agreement to purchase a conservation easement under ACEP. Additionally, where appropriate, NRCS may include several different types of payments in the same instrument or enter into multiple program contracts for

distinct activities implemented by a producer. NRCS will not make duplicative payments for the same conservation benefits on the same land.

Producers seeking to participate in an RCPP project must meet all RCPP eligibility requirements. These requirements vary depending on the producer's objectives and the eligible activities selected for implementation under the program contract. A participant may elect to use a certified TSP for technical assistance associated with conservation planning or practice design and implementation. Information about services that may be available from a certified TSP can be found at: <http://techreg.usda.gov/>.

### **Types of Program Contracts with Producers**

There are five general types of financial assistance activities that encompass the range of eligible activities available in RCPP analogous to those authorized by the covered programs:

- 1) Land management contracts that include land improvement, management, or restoration activities, including land treatment activities as authorized by Public Law 83-566;
- 2) Land rental contracts;
- 3) Conservation easements held by the United States ("US-held easements");
- 4) Conservation easements held by an eligible entity ("entity-held easements");  
and
- 5) Public works contracts.

#### **1. Land management contracts**

Land management contracts are based on an EQIP/CSP-like contracting model between NRCS and an eligible producer, including private landowners, committed to

addressing RCPP project resource concerns on eligible lands. The conservation activities included under this category also include restoration and land management practices authorized under ACEP-Wetland Reserve Easement (WRE), HFRP, and Public Law 83-566 (land treatment). Land management contracts will utilize proven aspects of NRCS planning, implementation, and contracting methodology, and are expected to be based principally on NRCS conservation practice standards, existing CSP enhancements, stewardship activities, and existing payment schedules. However, producer and land eligibility restrictions tied to specific EQIP and CSP regulatory requirements, such as CSP “whole operation” requirements or EQIP irrigation history requirements do not apply to these land management contracts. Payment rates for land management contracts are expected to mimic similar rates under the covered programs. However, payment rates are among the requirements which NRCS may negotiate at the project (vs participant contract) level. NRCS may approve payment schedules that provide increased payment rates when the agency determines that offsetting features of the project (for example, partner contributions) support requested payment rates and scenarios.

## **2. Land Rental Activities**

NRCS will offer land rental activities through a rental contract that will be based on a combination of the CRP rental contract and a land management contract as described above. The contract document for land rental activities between NRCS and an eligible producer will address RCPP project resource concerns on eligible lands. Application, ranking, and contracting will emulate applicable aspects of NRCS ranking processes, to include use of ranking tools to assess expected conservation benefits on a project by project basis, and standard NRCS contracting processes like those employed in similar

NRCS conservation activity based programs to help ensure conservation delivery and financial accountability. However, unlike the traditional CRP program administered by USDA's Farm Service Agency, RCPP land rental authority is not generally expected to be used for landscape-scale soil erosion protection. Rather, NRCS expects that land rental contracts will focus on short-term, targeted rental needs in the context of a larger RCPP project. Examples include paying 1–3 years of forgone income to incentivize adoption of an innovative cropping system or to transition to an organic production system. RCPP rental contracts will be based on proven aspects of NRCS planning, implementation, and contracting methodology, which may include an estimate of forgone income.

### **3. U.S.-Held Conservation Easements**

RCPP conservation easement enrollment opportunities will be offered to eligible landowners to execute conservation easements on a diversity of land uses. U.S.-held easements are in general permanent easements with exceptions for Tribes (that is, 30-year contracts) or States where State law prohibits permanent easements (duration set at the longest duration allowable under State law). Under current NRCS covered programs, U.S.-held easements are only available for wetlands (ACEP-WRE) and forestland (HFRP). For RCPP, U.S.-held easements will be available for any agriculturally linked land use, such as cropland, grasslands, natural wetlands, or riparian areas buffering agricultural lands. RCPP easements are driven by ties to RCPP project resource concerns and conservation benefits, not land use or other covered program eligibility factors.

Application, ranking, easement acquisition processes, and contracting will emulate applicable aspects of ACEP and HFRP. RCPP easements will use new template

deeds based on the level of restriction warranted by the easement in the specific context of a RCPP project, which will be a foundational component of landowner application, evaluation, and ranking. The more restrictive the terms of the easement, the higher the percentage of the easement value that may be provided under RCPP.

#### **4. Entity-Held RCPP Conservation Easements**

ACEP-Agricultural Land Easement (ALE) authorizes entity-held agricultural land easements. For RCPP, entity-held easements are eligible for any land use and driven by conservation benefits and resource concerns identified in the RCPP project. Therefore, in addition to entity-held easements to protect working agricultural lands (as allowed under ALE), entity-held easements under RCPP may be enrolled on other eligible land, including forest land, wetlands, and riparian areas. Entity-held easements under RCPP require collaboration between NRCS, a qualified entity, and an eligible landowner. Given the statutory structure, NRCS will utilize a supplemental agreement with a qualified entity to establish the terms and conditions under which NRCS will provide financial assistance for the qualified eligible entity to purchase a conservation easement from an eligible producer. Application, ranking, easement acquisition processes, matching, and contracting will emulate applicable aspects of ACEP-ALE.

#### **5. Public Works Supplemental Agreements**

Through the public works component of RCPP, eligible partners may receive financial assistance awards to support implementation of structural works of improvement to address watershed-scale issues on eligible land, similar to projects currently carried out under Public Law 83-566. Unlike other RCPP contract types, RCPP project proposals must detail proposed public works activities (that is, detailed plan of

work) to provide project reviewers information needed to assess project viability.

Financial assistance for works of improvement will be awarded through a supplemental agreement. Under the supplemental agreement, unlike for other types of RCPP activities, partners lead the planning, design, and installation of works of improvement. However, NRCS retains watershed plan and design approval authority consistent with Federal infrastructure projects and informed by NRCS watershed and engineering directives and related Public Law 83-566 policy.

### **Summary of Regulatory Framework**

The RCPP regulation has four subparts:

- Subpart A provides the general framework for the program and provides the purposes, scope, definitions, fund allocations, and basic program requirements.
- Subpart B provides the framework for the proposal, selection, and administration of RCPP partnership agreements, including supplemental agreements to facilitate the provision of program assistance to producers. This subpart also includes general provisions related to third party contracts.
- Subpart C provides the framework under which NRCS provides program assistance to producers to implement eligible activities.
- Subpart D provides the standard programmatic information about appeals, assignments, and related matters.



## **Effective Date, Notice and Comment, and Paperwork Reduction Act**

In general, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involved matters relating to benefits and is therefore exempt from APA requirements. Further, the regulations to implement the programs of Chapter 58 of Title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs are—

- To be made as an interim rule effective on publication, with an opportunity for notice and comment;
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35); and
- To use the authority under 5 U.S.C. 808 related to Congressional review and avoid any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effect date of 60-days after publication to allow for Congressional Review. This rule is a major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill changes to RCPP, and the need to implement the RCPP regulations expeditiously to provide assistance to producers, NRCS

and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, NRCS and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the Federal Register.

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any recommended changes, and include supporting data and references to the relevant section of either the 2018 Farm Bill or the 1985 Farm Bill. All comments received on or before the closing date for comments will be considered. NRCS will review and respond to the public comments in the RCPP final rule.

NRCS is especially interested in obtaining public comment on the following topics:

- CCAs and their associated priority resource concerns;
- How best to develop and report project outcomes;
- Ideas on how to implement RCPP easements;
- How to incorporate land rental authorities into program implementation;
- Alternative Funding Arrangements; and
- Project renewal criteria.

#### **Executive Orders 12866, 13563, 13771, and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a Federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this proposed rule are summarized below. The full cost benefit analysis is available on <https://www.regulations.gov/>.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, to manage the private costs required to comply with Federal regulations for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule involves transfer payments and does not rise to the level required to comply with Executive Order 13771.

### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or ordering of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

### **Summary of Economic Impacts**

RCPP is a voluntary collaborative program that provides financial and technical assistance to partner organizations to help agricultural producers plan and implement conservation activities to address natural resource concerns on private or Tribal agricultural, nonindustrial private forest and certain associated lands. RCPP was first authorized by Congress in the Agricultural Act of 2014 (the 2014 Farm Bill). To date, 375 projects have been selected across the United States and Puerto Rico leveraging \$1 billion in NRCS technical and financial assistance with approximately \$1.3 billion in partner contributions. The 2014 Farm Bill provided \$100 million annually in RCPP mandatory funding. Furthermore, under the 2014 Farm Bill, conservation activities were undertaken through partnership agreements (between NRCS and a lead partner) and contracts or agreements with eligible landowners, entities, and individuals under one or more covered programs (EQIP, CSP, ACEP, HFRP, and the Watershed Protection and

Flood Prevention Act). EQIP, CSP, and ACEP each contributed seven percent of their annual funding toward RCPP projects.

The 2018 Farm Bill reauthorizes RCPP with significant changes to how the program is funded. Specifically, contributions from “covered programs” are eliminated and “covered program contracts” are replaced with RCPP contracts and programmatic partnership agreements.

The 2018 Farm Bill repeals the seven percent reserved resources from the covered programs, provides \$300 million in annual mandatory Commodity Credit Corporation (CCC) funding, and establishes RCPP standalone contracts. Federal transfers under the 2014 Farm Bill totaled slightly more than \$1 billion for FY 2014 through 2018, or \$200 million on an annual basis. The \$300 million in mandatory annual funding increases RCPP funding by approximately \$100 million annually, taking into account the past contribution of the “covered programs” during FY 2014 through 18.

The 2018 Farm Bill also changes the “funding pool” structure by streamlining from three pools to two pools and providing that 50 percent of funds go to a Critical Conservation Areas pool and 50 percent of funds go to a state or multi-state pool. It also allows project renewals and creates new programmatic authorities and expectations for the administration of agreements with partners. In addition, application and renewal processes are simplified to encourage participation by both producers and project partners. NRCS intends that the majority of funds awarded each year will be awarded under a competitive process. If the lead partner makes such a request, NRCS may renew a partnership agreement. To ensure that only the most successful of projects qualify for renewal on a non-competitive basis, NRCS has identified in this rule that a partner must

meet or exceed the objectives of the original project in order to be considered for renewal.

Most of this rule's impact consists of transfer payments from the Federal Government to producers or to partners for the benefit of producers. Conservation benefits of RCPP financial and technical assistance funding delivered to date have been directly comparable to that provided by covered programs (EQIP, CSP, ACEP, etc.), and similar benefits are expected from RCPP funding under the 2018 Farm Bill.

Additionally, conservation benefits of partner contributions and collaboration in RCPP projects is expected to magnify the benefits of RCPP funding over each project's life, offsetting initial delays in obligation and implementation. NRCS will discuss methods to quantify the incremental benefits obtained from RCPP with lead partners, but due to the 5 year life of a typical RCPP project, only limited data are available at this time to support this conclusion. Therefore, NRCS and partners may use various mechanisms such as modeling to predict long-term outcomes. Despite these data limitations, RCPP is expected to positively affect natural resource concerns—through both the \$300 million in funding provided annually by Congress and by the leverage of partner contributions.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by the APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is

not subject to the Regulatory Flexibility Act because no law requires that a proposed rule be published for this rulemaking initiative. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in RCPP and in doing so receive its benefits. Compliance with the provisions of RCPP regulations is only required for those entities who choose to participate in this voluntary program.

### **Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). The 2018 Farm Bill requires minor changes to NRCS conservation programs, and there are no changes to the basic structure of the programs. The analysis has determined there will not be a significant impact to the human environment and as a result, an environmental impact statement (EIS) is not required to be prepared (40 CFR § 1508.13). While OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. The Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available for review and comment for 30 days from the date of publication of this interim rule in the *Federal Register*. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the

proposed action or its impacts that warrant supplementing or revising the current available draft of the RCPP EA and FONSI.

A copy of the EA and FONSI may be obtained from <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=stelprdb1263599>. Follow the instructions in the **ADDRESSES** section above for submitting comments.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.



### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. It does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA’s Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implication that requires Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National Museum of the American Indian in Washington, DC. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title II session. There were no specific

comments from Tribes on the RCPP rule during the Tribal consultation. If a tribe requests additional consultation, NRCS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

Separate from Tribal consultation, communication and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about this regulation. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation Advisory Council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests. Additionally, NRCS held several sessions with Indian Tribes and Tribal entities across the country in fiscal year 2019 to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access. NRCS will continue to reach out to Indian Tribes and Tribal entities to obtain input about how to improve NRCS delivery of RCPP and our other conservation programs.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector. Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal

mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal Governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of UMRA, for State, local, and Tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

### **Federal Assistance Programs**

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies is: 10.932—Regional Conservation Partnership Program.

### **E-Government Act Compliance**

NRCS and CCC are committed to complying with the E-Government Act of 2002 (44 U.S.C. 101), to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 1464**

Agricultural operations, Conservation payments, Conservation practices, Eligible activities, Environmental credits, Forestry management, Natural resources, Resource concern, Soil and water conservation, Wildlife.

For the reasons stated in the preamble, CCC adds part 1464 to Title 7 of the Code of Federal Regulations to read as follows:

### **PART 1464—REGIONAL CONSERVATION PARTNERSHIP PROGRAM**

## **Subpart A—General Provisions**

### **Sec.**

- 1464.1 Applicability.
- 1464.2 Administration.
- 1464.3 Definitions.
- 1464.4 Funding pool allocations.
- 1464.5 Program requirements.

## **Subpart B—Partnership Agreements**

- 1464.20 Proposal procedures.
- 1464.21 Ranking considerations and proposal selection.
- 1464.22 Partnership agreements.
- 1464.23 Funding.
- 1464.24 Modifications, noncompliance, termination, and remedies.
- 1464.25 Alternative funding arrangements or grant agreements.
- 1464.26 Supplemental agreements.
- 1464.27 Third-party contracts or agreements.

## **Subpart C — Program contracts**

- 1464.30 Application for contracts and selecting applications for funding.
- 1464.31 Program contract requirements.
- 1464.32 Modifications and transfers of land.
- 1464.33 Violations and remedies.

## **Subpart D — General Administration**

- 1464.40 Appeals.
- 1464.41 Compliance with regulatory measures.
- 1464.42 Access to agricultural operation or tract.
- 1464.43 Equitable relief.
- 1464.44 Offsets and assignments.
- 1464.45 Misrepresentation and scheme or device.
- 1464.46 Environmental credits for conservation improvements.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3871 et seq.

## **Subpart A—General Provisions**

### **§ 1464.1 Applicability.**

(a) The purposes of the Regional Conservation Partnership Program (RCPP) are as follows:

(1) Carry out eligible activities to further the conservation, protection, restoration, and sustainable use of soil, water (including sources of drinking water and ground water), wildlife, agricultural land, and related natural resources on eligible land on a regional or watershed scale;

(2) Encourage eligible partners to cooperate with producers in—

(i) Meeting or avoiding the need for national, State, and local natural resource regulatory requirements related to production on eligible lands, including through alignment of partnership projects with other national, State, and local agencies and programs addressing similar natural resource or environmental concerns, and

(ii) Implementing projects that will result in the adoption, installation, and maintenance of eligible activities that affect multiple agricultural or nonindustrial private forest operations on a local, regional, State, or multistate basis;

(3) Encourage flexible and streamlined delivery of conservation assistance to producers through partnership agreements; and

(4) Engage producers and eligible partners in conservation projects to achieve greater conservation outcomes and benefits for producers than would otherwise be achieved.

(b) Through RCPP, NRCS provides technical and financial assistance to implement eligible activities through partnership and supplemental agreements with eligible partners and program contracts with producers.

(c) RCPP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Each program contract, partnership agreement, and supplemental agreement is subject to the regulations in place on the date it is executed.

**§ 1464.2 Administration.**

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out RCPP. Accordingly, each reference to NRCS in this part also refers to CCC funds, facilities, and authorities where applicable.

(b) No delegation in this part to lower organizational levels will preclude the Chief of NRCS from making any determinations under this part, re delegating to other organizational levels, or from reversing or modifying any determination made under this part.

(c) NRCS may use other agency-wide authorities, such as 16 U.S.C. 3842 and 31 U.S.C. 1535, to enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this part.

(d) To assist in the implementation of the program, the Chief may waive the applicability of the limitation in section 1001D of the Food Security Act of 1985 for participating producers if the Chief determines that the waiver is necessary to fulfill the objectives of the program. Section 1001D of the Food Security Act of 1985 does not apply to eligible partners.

(e) NRCS will identify in each State a program coordinator who will serve as the primary point of contact for programmatic implementation of RCPP in that State.

(f) NRCS will establish guidance to assist eligible partners with quantifying conservation benefits of RCPP implementation. Due to the diversity of natural resource issues addressed by an RCPP project and the diversity of conservation activities that a project may undertake, NRCS will work with each partner to develop project-specific outcome approach that will be included in the partnership agreement.

### **§ 1464.3 Definitions.**

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Agricultural operation* means a parcel or parcels of land whether contiguous or noncontiguous, that is—

(1) Under the effective control of the producer at the time the producer applies for a program contract; and

(2) That is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

*Applicant* means a producer who has requested in writing to participate in RCPP.

*Beginning farmer or rancher* means a person, Indian Tribe, Tribal corporation, or legal entity who has not materially and substantially operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has materially and substantially operated

a farm, ranch, or NIPF for not more than 10 consecutive years, subject to the following conditions:

(1) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch, and no member may have materially and substantially operated a farm, ranch, or NIPF for more than 10 consecutive years, and material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

*Chief* means the Chief of NRCS, USDA, or designee.

*Conservation benefits* means the improvements in the status of resource concerns, priority resource concerns, and similar project goals resulting from the implementation of eligible activities in an RCPP project area.

*Covered program* means the—

(1) Agricultural Conservation Easement Program administered under 7 CFR part 1468;

(2) Environmental Quality Incentives Program administered under 7 CFR part 1466;



(3) Conservation Stewardship Program administered under 7 CFR part 1470, except for the Grassland Conservation Initiative set forth in section 1240L-1 of the Food Security Act of 1985;

(4) Healthy Forests Reserve Program administered under 7 CFR part 625;

(5) Watershed protection and flood prevention programs administered under 7 CFR part 622, except the Watershed Rehabilitation Program set forth in 16 U.S.C. 1012; and

(6) Conservation Reserve Program administered under 7 CFR part 1410.

*Critical conservation area (CCA)* means a geographical area designated by the Secretary of Agriculture that contains a critical conservation condition that can be addressed through the program.

*Effective control* means possession of the land by ownership, written lease, or other legal agreement and authority to act as decision maker for the day-to-day management of the operation from the time of application and for the duration of the program contract or applicable terms of a supplemental agreement.

*Eligible activity* means a practice, activity, land rental, agreement, easement, or related conservation measure that is available under the statutory authority for a covered program, as determined by NRCS.

*Eligible land* means any land that NRCS determines is eligible under §1464.5.

*Eligible partner* means an agency, organization, or other entity specified in §1464.5 that NRCS determines the appropriate authority, expertise, and resources necessary to carry out partnership responsibilities.

*Historically underserved producer* means a person, joint operation, Indian Tribe, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher.

*Indian Tribe* means any Indian Tribe, Band, Nation, Pueblo, 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.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Joint operation* means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

*Lead partner* means an eligible partner who is the primary signatory of a partnership agreement with NRCS and is identified as the lead partner in that agreement.

*Legal entity* means, as defined in part 1400 of this chapter, an entity created under Federal or State law that—

- (1) Owns land or an agricultural commodity, product, or livestock; or
- (2) Produces an agricultural commodity, product, or livestock.

*Limited resource farmer or rancher* means:

- (1) A person who:
  - (i) Has direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years (adjusted for inflation using the Prices Paid by Farmer Index as compiled by USDA's National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

*Liquidated damages* means a sum of money stipulated that a participant agrees to pay NRCS if the participant fails to fulfill the terms of the program contract. The sum represents an estimate of the expenses incurred by NRCS to service the program contract and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

*Natural Resources Conservation Service (NRCS)* is an agency of the USDA, which has responsibility for administering RCPP using the funds, facilities, and authorities of the CCC.

*Nonlead partner* means an eligible partner, other than a lead partner, who has entered into a supplemental agreement with NRCS consistent with the terms of a partnership agreement.

*Nonindustrial private forest land (NIPF)* means rural land, as determined by NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, acequia, or other private legal entity that has definitive decision-making authority over the land.

*Participant* means a person, legal entity, joint operation, or Indian Tribe who has applied for participation and is receiving a financial assistance payment or is responsible for implementing the terms and conditions of a program contract.

*Partnership agreement* means a programmatic agreement between NRCS and a lead partner.

*Person* means a natural person and does not include a legal entity.

*Priority resource concern* means a natural resource concern located in a CCA that can be addressed through:

(1) Water quality improvement, including through reducing erosion, promoting sediment control, and addressing nutrient management activities affecting large bodies of water of regional, national, or international significance;

(2) Water quantity improvement, including improvement relating to:

(i) Drought;

(ii) Ground water, surface water, aquifer, or other water sources; or

(iii) Water retention and flood prevention;

(3) Wildlife habitat restoration to address species of concern at a Federal, State, or local level; and

(4) Other natural resource improvements, as determined by the Chief, within the CCA.

*Producer* means a person, legal entity, joint operation, or Indian Tribe who NRCS determines is:

(1) Engaged in agricultural production or forestry management on the agricultural operation; or

(2) The landowner of eligible land for purposes of a program contract or associated supplemental agreement, as determined by NRCS.

*Program* means the Regional Conservation Partnership Program (RCPP) administered by NRCS under this part.

*Program contract* means a binding agreement under the program for the transfer of assistance from NRCS to the producer to compensate the producer for the implementation of eligible activities that specifies the rights and obligations of any producer participating in the program.

*Project resource concern* means a specific resource concern set out in a partnership agreement that is of special importance or significance for the purposes of that partnership agreement.

*Proposal* means an offer submitted by an eligible partner for consideration and ranking for selection by NRCS to enter into a partnership agreement.

*RCPP plan of operations* means the document that identifies the location and timing of eligible activities that the participant agrees to implement on eligible land.

*Resource concern* means a specific natural resource problem that is likely to be addressed successfully through the implementation of the eligible activities.

*Socially disadvantaged farmer or rancher* means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

*State Technical Committee* means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

*Supplemental agreement* means a legal document between NRCS and an eligible lead or nonlead partner that is subject to the terms of a partnership agreement and which furthers the purposes of the partnership agreement.

*Technical service provider (TSP)* means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by USDA to assist in program implementation through a supplemental agreement or otherwise through a procurement contract, contribution agreement, or cooperative agreement with USDA.

*Veteran farmer or rancher* means a producer who meets the definition in section 2501(a)(7) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)(7)).

#### **§ 1464.4 Funding pool allocations.**

(a) Of the funds made available for the program, NRCS will allocate:

(1) Fifty percent of the funds to projects based on a State or multistate competitive process; and

(2) Fifty percent of the funds to projects for the CCAs designated by the Secretary.

(b) NRCS will allocate funds under the funding pools identified under paragraph (a) of this section to projects selected on a competitive basis pursuant to partnership agreement proposals submitted under the requirements of subpart B of this part.

#### **§ 1464.5 Program requirements.**

(a) *General requirements.*

(1) Program participation is voluntary.

(2) NRCS and lead partners enter into partnership agreements that identify the purposes and scope of RCPP projects under the framework of a partnership agreement.

(3) NRCS and lead partners enter into supplemental agreements to facilitate assistance to producers.

(4) NRCS enters into program contracts with producers to provide program assistance to eligible producers to implement eligible activities on eligible land.

(5) NRCS may enter into an alternative funding arrangement with a lead partner for the lead partner to deliver program assistance directly to producers in accordance with §1464.25 of this part.

(b) *Partner eligibility.* An eligible partner may include:

(1) An agricultural or silvicultural producer association or other group of producers;

(2) A State or unit of local government, including a conservation district;

(3) An Indian Tribe;

(4) A farmer cooperative;

(5) An institution of higher education;

(6) A water district, irrigation district, acequia, rural water district or association, or other organization with specific water delivery authority to producers on agricultural land;

(7) A municipal water or wastewater treatment entity;

(8) An organization or entity with an established history of working cooperatively with producers on agricultural land, as determined by the Secretary, to address—

(i) Local conservation priorities related to agricultural production, wildlife habitat development, and NIPF management; or

(ii) Critical watershed-scale soil erosion, water quality, sediment reduction, or other natural resource concerns; or

(9) An eligible entity as identified by NRCS pursuant to 7 CFR part 1468.

(c) *Producer eligibility.* To be eligible to receive payments or benefits under the program, each producer must—

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

(2) Meet the adjusted gross income payment limitations under part 1400 of this chapter unless waived by the Chief;

(3) Have effective control of the land;

(4) NRCS may approve interim conservation practice standards or activities if—

(i) New technologies or management approaches that provide a high potential for optimizing conservation benefits have been developed; and

(ii) The interim conservation practice standard or activity incorporates the new technologies and provides financial assistance for pilot work to evaluate and assess the performance, efficiency, and effectiveness of the new technology or management approach.



(f) *Technical service provision.* (1) NRCS may use the services of a qualified TSP, including a qualified eligible partner, in meeting its responsibilities for technical assistance.

(2) Producers or eligible partners may use technical services from qualified personnel of other Federal, State, and local agencies, Indian Tribes, or individuals who are certified as TSPs under 7 CFR part 652.

(3) Technical services provided by qualified personnel not affiliated with USDA may include but are not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and other program implementation services as identified by NRCS.

(4) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving RCPP payments.

## **Subpart B—Partnership Agreements**

### **§ 1464.20 Proposal procedures.**

(a) NRCS will:

(1) Periodically announce opportunities through a simplified competitive process for eligible partners to submit proposals for partnership agreements; and

(2) Make public the criteria that will be used to evaluate proposals for partnership agreements in each announced project selection opportunity, which may include whether NRCS will consider alternative funding arrangements or grant agreements during the selection opportunity or whether proposals seeking alternative funding arrangements or grant agreements will have a separate selection opportunity. These criteria will relate to

four principle categories: impact, partner cash and in-kind contribution, innovation, and project management.

(b) A partnership agreement proposal submitted by the eligible partner must include the following:

(1) The scope of the proposed project;

(2) A plan for monitoring, evaluating, and reporting on progress made toward achieving the project's objectives;

(3) The estimated RCPP funding and other program resources requested for the project including any advance technical assistance for outreach in the project area;

(4) Whether the eligible partner is requesting NRCS to consider the proposal for funding under an alternative funding arrangement or grant agreement under §1464.25;

(5) Each eligible partner collaborating to achieve project objectives, including their roles, responsibilities, capabilities, and contribution; and

(6) Other information NRCS may identify as necessary to evaluate and select proposals.

**§ 1464.21 Ranking considerations and proposal selection.**

(a) *Final selection.* NRCS will rank and select proposals for partnership agreements pursuant to the evaluation criteria listed in 1464.20(a)(2).

(b) *Priority to certain proposals.* NRCS may give a higher priority to proposals for partnership agreements that—

(1) Assist producers in meeting or avoiding the need for a natural resource regulatory requirement;

- (2) Have a high percentage of producers in the area to be covered by the agreement;
- (3) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or national efforts;
- (4) Build new partnerships with local, State, and private entities to include a diversity of stakeholders in the project;
- (5) Deliver a high percentage of applied conservation to achieve conservation benefits or address the priority resource concern for a designated CCA;
- (6) Implement the project consistent with existing watershed, habitat, or other area restoration plans;
- (7) Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods; or
- (8) Meet other factors that are important for achieving the purposes of the program, as determined by NRCS.

(c) *Proposals in CCAs.* (1) NRCS will select proposals for partnership agreements within CCAs that address one or more priority resource concerns for which the CCA is designated.

(2) NRCS will identify the designated CCAs and publish the priority resource concerns for each CCA.

(3) NRCS will identify the priority resource concerns and associated ranking criteria in any announcement under § 1464.20.

**§ 1464.22 Partnership agreements.**

(a) *In general.* Upon selection of a proposal for partnership agreement, NRCS will work with the eligible partner to develop the specifics of the partnership agreement. NRCS may offer a reduced amount of program assistance from that requested in the proposal for a partnership agreement or negotiate other project details.

(b) *Duration.* A partnership agreement between NRCS and a lead partner will be for a period of time:

(1) Not to exceed 5 years; or

(2) That is longer than 5 years if the longer period of time is necessary to meet the objectives of the program, as determined by NRCS.

(c) *Extension.* A partnership agreement, including a renewal of a partnership agreement, may be extended not more than one time for a period of time not longer than 12 months, as determined by NRCS.

(d) *Requirements.* The partnership agreement between NRCS and a lead partner will:

(1) Specify the scope of a project, including:

(i) One or more conservation benefits that the project will achieve;

(ii) The eligible activities on eligible land to be conducted under the project to achieve conservation benefits;

(iii) The implementation timeline for carrying out the project, including any interim milestones;

(iv) The local, State, multistate, or other geographic area covered; and

(v) The planning, outreach, implementation, and assessment to be conducted.

(2) Identify the outreach and education to producers for potential participation in the project;

(3) Authorize the lead partner, at the request of a producer, to act on behalf of a producer participating in the project in applying for assistance under subpart C of this part;

(4) Identify the significant contribution to the project costs by the lead partner, including any direct or indirect funding or in-kind support that will be contributed to help achieve the project objectives;

(5) Define the conservation benefits and other outcomes to be achieved by the project including the impact to any priority or project resource concern;

(6) Require the lead partner to assess periodically the progress made by the project in achieving the defined conservation benefits and outcomes;

(7) Require the lead partner to report to NRCS at the conclusion of the project on the project's results and funding leveraged;

(8) Set forth the total amount of financial and technical assistance funding that NRCS will reserve to support project implementation;

(9) Establish the general terms and conditions of any supplemental agreements that NRCS or the lead partner may enter into with nonlead partners;

(10) Identify the terms and conditions under which either NRCS or the lead partner may enter into supplemental agreements to further the purposes of the partnership agreement;

(11) Identify the other requirements identified by NRCS; and

(12) Include any unique requirements if the partnership agreement is a grant agreement or alternative funding arrangement.

(e) *Supplemental agreements.* NRCS may enter into supplemental agreements with a lead partner or a nonlead partner to provide technical assistance or to assist producers with implementation of eligible activities in the project area as identified in §1464.26.

(f) *Partnership agreement renewal.* (1) As determined by NRCS, a partnership agreement may be renewed for a period not to exceed 5 years.

(2) NRCS may agree to renew the partnership agreement through an expedited process if—

(i) The lead partner requests such a renewal; and

(ii) NRCS determines that the project has met or exceeded project objectives as verified by NRCS.

(3) To facilitate expedited renewal, NRCS may designate a portion of available RCPP funding for expedited renewal requests.

(4) NRCS will not rank expedited renewal requests against new proposals.

(5) Under a renewal of a partnership agreement, the parties may request to continue to implement the project as defined in the original partnership agreement or expand the scope of the project consistent with the objectives and purposes of the original partnership agreement.

(g) *Notification.* All eligible partners who submit a proposal for a partnership agreement or submit a request to renew a partnership agreement will receive notification

from NRCS regarding selection or nonselection of the project proposal or approval or denial of the renewal request.

**§ 1464.23 Funding.**

(a) Except as otherwise provided in this subpart, NRCS will only provide technical and financial assistance to producers through program contracts as described in subpart C of this part.

(b) Notwithstanding the restriction set forth in paragraph (a) of this section, NRCS may provide technical and financial assistance to a partner:

(1) Where the partnership agreement is funded through an alternative funding arrangement or grant agreement under §1464.25; or

(2) Pursuant to a supplemental agreement executed in furtherance of a partnership agreement, as set forth in §1464.26.

(c) Notwithstanding the restriction set forth in paragraph (a) of this section, pursuant to a partnership agreement or supplemental agreement, NRCS may provide funding to a partner for technical assistance for an eligible purpose, such as:

(1) Providing outreach and education for potential participation in the project;

(2) Establishing baseline metrics to support the development of the assessment required under § 1464.22(d)(6); or

(3) Providing technical assistance to producers.

(d) Notwithstanding the restriction set forth in paragraph (a) of this section, NRCS may enter into third-party contracts or agreements to meet its responsibilities under the program using program funding.

(e) Any funding provided by NRCS under paragraphs (a) through (d) of this section will count against the total amount of funding that NRCS agreed to provide to the project under the terms of the partnership agreement.

**§ 1464.24 Modification, noncompliance, termination, and remedies.**

(a) *Modifications.* NRCS may modify a partnership agreement, including associated supplemental agreements, if—

(1) The lead partner or, as applicable, the nonlead partner agrees to the modification; and

(2) NRCS determines the modified partnership agreement or associated supplemental agreement continues to meet the purposes of the program.

(b) *Noncompliance.* In the event of noncompliance with the partnership agreement terms, NRCS will provide the lead partner written notice as specified in the partnership agreement, and, where appropriate, a reasonable opportunity to correct voluntarily the noncompliance in accordance with the terms of the partnership agreement.

(c) *Terminations.* (1) Lead partners may request that NRCS terminate the partnership agreement, provided the request for termination is in writing, and includes the reasons for termination.

(2) NRCS may terminate a partnership agreement if—

(i) Justified by the reasons provided by the lead partner;

(ii) NRCS determines that a modification of the partnership agreement is necessary to comply with applicable law and the partner does not concur with such modification; or



(iii) The lead partner fails to correct noncompliance with a term of the partnership agreement under paragraph (b) of this section.

(3) A termination may be justified by circumstances beyond the lead partners' control that prevents completion of one or more provisions of the partnership agreement, such as a natural disaster or other circumstances in which NRCS may determine that termination is in the public interest.

(4) If a program agreement is terminated, the lead partner forfeits all rights to any remaining technical or financial assistance under the partnership agreement.

(d) *Effect on other agreements.* Termination of a partnership agreement under this section will—

(1) Not affect the validity of any program contract that was entered into within the project area encompassed by the partnership agreement; and

(2) Result in the termination of a supplemental agreement unless NRCS determines that the supplemental agreement would continue to provide necessary program implementation assistance to producers with program contracts or otherwise advance an eligible program activity within the project area.

(e) *Refund and right to future assistance.* If NRCS terminates a partnership agreement due to noncompliance with its terms or conditions, the lead partner will forfeit any right to future assistance under the partnership agreement and will refund all or part of any payments received directly by the lead partner, plus interest.

(f) *Liquidated damages.* (1) NRCS may include terms in a partnership agreement that allow for the assessment of liquidated damages against the lead partner in the event of an intentional breach.

(2) The amount of any liquidated damages will be set at an amount reasonably calculated to reimburse NRCS for its foreseeable losses in the event of noncompliance and will not be punitive in nature.

**§ 1464.25 Alternative funding arrangements or grant agreements.**

(a) When the Chief so determines, NRCS may offer to fund a proposal through an alternative funding arrangement or grant agreement under this section.

(b) In determining whether to offer to fund a proposal through an alternative funding arrangement or grant agreement, the Chief will consider the extent to which the proposal:

(1) Will achieve conservation benefits on a regional or watershed scale;

(2) Involves investments in infrastructure (such as roads, dams, and irrigation facilities) related to agricultural or nonindustrial private forest production that would benefit multiple producers and address natural resource concerns such as drought, wildfire, or water quality impairment on the land within the proposal area;

(3) Addresses natural resource concerns, including the development and implementation of watershed, habitat, or other area restoration plans;

(4) Uses innovative approaches to leverage the Federal investment with private financial mechanisms, such as:

(i) Provision of performance-based payments to producers, or

(ii) Support for an environmental market; and

(5) Otherwise demonstrates that the goals and objectives of the program would be more easily achieved by offering to fund the proposal through an alternative funding arrangement or grant agreement under this section.

(c) The terms of an alternative funding arrangement or grant agreement may be made expressly in the partnership agreement and may include providing financial assistance directly to the lead partner or to nonlead partners through supplemental agreements.

(d) NRCS will not enter into more than 15 partnership agreements funded through an alternative funding arrangement or grant agreement each fiscal year.

**§ 1464.26 Supplemental agreements.**

(a) *Authorization.* Subject to the conditions in this section and in the partnership agreement, NRCS may enter into supplemental agreements with a lead partner or a nonlead partner.

(b) *Effect on programmatic agreement.* A supplemental agreement may not modify the substantive terms of the partnership agreement.

(c) *Technical assistance.* (1) NRCS may provide technical assistance funds under a supplemental agreement to facilitate the provision of technical assistance by the lead partner or nonlead partner to producers in the project area.

(2) Any technical assistance funds obligated under a supplemental agreement by NRCS will count against the total amount of technical assistance funds that NRCS agreed to provide to the project under the terms of the partnership agreement.

(d) *Financial assistance.* Based upon eligibility, evaluation, and selection criteria developed by NRCS, NRCS may provide financial assistance funds under a supplemental agreement if the supplemental agreement is:

(1) To facilitate the conveyance of an easement to an eligible entity by a producer;

(2) To implement an eligible activity that is available under 7 CFR part 622, except for the Watershed Rehabilitation Program set forth in 16 U.S.C. 1012;

(3) Other situations where a program contract requires the integration of a supplemental agreement to facilitate the implementation of an eligible activity, as determined by NRCS.

(e) *Term.* A supplemental agreement will be for a term that is within the term of a partnership agreement unless NRCS determines that the term of the supplemental agreement should extend beyond the term of the partnership agreement to ensure appropriate assistance to participating producers or completion of an eligible activity.

(f) *Noncompliance and remedies.* NRCS will incorporate in a supplemental agreement:

(1) The procedures required in the event of a determination that the lead partner or nonlead partner is not in compliance with the terms and conditions of the supplemental agreement;

(2) The consequences for failure to remedy noncompliance, including termination of the supplemental agreement, the requirement to repay any payments received, forfeit any future payments, and the availability of liquidated damages;

- (3) The impacts of termination of the supplemental agreement upon the partnership agreement or any associated program contract;
- (4) The availability, if any, of administrative review of NRCS determinations under §1464.40; and
- (5) Other terms and conditions NRCS determines necessary to ensure the effective delivery of program resources to producers.

**§ 1464.27 Third-party contracts or agreements.**

(a) Lead and nonlead partners may employ third-party contracts or agreements to fulfill their obligations under a partnership or supplemental agreement, subject to approval by the Chief or as allowed per the terms of the partnership or supplemental agreement.

(b) Any costs to a lead or nonlead partner as part of a third-party contract or agreement as described in paragraph (a) of this section may constitute all or part of a partner contribution described in §1464.22(d)(4) to the extent that such costs directly relate to fulfilling the obligations of a partnership or supplemental agreement, as determined by NRCS.

(c) NRCS may employ third-party contracts or agreements in order to meet its responsibilities under the terms of an approved partnership agreement, supplemental agreement, or program contract, including but not limited to easement acquisition services, implementation services, or other goods or services NRCS determines are necessary to meet its responsibilities under RCPP.

## **Subpart C—Program contracts**

### **§ 1464.30 Application for program contracts and selecting applications for funding.**

(a) *Evaluation guidelines.* In evaluating program contract applications, NRCS may take into consideration the following guidelines:

(1) Any producer who has eligible land in a project area encompassed by a partnership agreement may submit an application for participation in RCPP.

(2) To the greatest extent practicable, applications for similar eligible activities may be grouped together in ranking pools for evaluation and ranking purposes.

(3) Upon execution of a partnership agreement, NRCS will accept producer applications for funding under such agreement throughout the fiscal year and may be evaluated and ranked on a continuous or ranking-period basis.

(4) NRCS may give priority to applications that are submitted as part of a bundle submitted by a lead partner.

(5) In selecting RCPP applications, NRCS will develop an evaluation and ranking process to prioritize eligible applications for funding that address the purposes of the project or CCA, including treating the identified project or priority resource concerns, as applicable.

(b) *Selection order.* (1) NRCS will select eligible applications for funding in order of ranking priority taking into account identified evaluation periods and ranking pools.

(2) NRCS may decline to select an eligible application if the remaining funding is insufficient to fund that application and NRCS may proceed to the next application in ranked order that can be funded with available funding.

(3) NRCS, in consultation with the lead partner, may identify and establish in the partnership agreement other limited circumstances that may warrant selection of eligible applications outside of a strictly applied rank order because such application is critical to the success of a project that provides conservation benefits to multiple producers or landowners in a community, watershed, or other geographic area.

(c) *Public information.* Pursuant to the terms of the partnership agreement, NRCS or the lead partner will make available to the public sign-up information, including the identification of program and priority resource concerns, a listing of eligible activities, payment rates for certain eligible activities, State supplemental guidance, and contact information for the RCPP State coordinators available to assist partners and applicants with the program.

(d) *Applications in CCAs.* (1) NRCS will identify the designated CCAs and publish priority resource concerns for a CCA project.

(2) NRCS will select eligible applications for program contracts within CCAs that address one or more priority resource concerns for which the CCA is designated.

(3) NRCS will identify the priority resource concerns and associated ranking criteria in any announcement under §1464.20.

**§ 1464.31 Program contract requirements.**

(a) *Requirement of a program contract.* For a producer to receive payments, the producer must enter into a program contract and agree to the terms and conditions associated with the type of eligible activity to be implemented.

(b) *Program contract contents.* A program contract will:

(1) Identify the requirements for participation under RCPP, including:

(i) Contract duration;

(ii) Maximum Federal payment amounts or rates; and

(iii) Any other necessary requirements, as determined by NRCS;

(2) Identify:

(i) The eligible activities that the participant agrees to implement; and

(ii) The requirements to demonstrate successful implementation of the eligible activities;

(3) Incorporate the RCPP plan of operations, as applicable, which includes—

(i) Identification of eligible activities contained in the program contract, including which resource concerns each eligible activity addresses;

(ii) A schedule or timeline for implementation of selected eligible activities, as applicable; and

(iii) Other criteria as determined necessary by NRCS;

(4) Incorporate provisions to further the purposes of the partnership agreement;

(5) Incorporate all provisions as required by statute or regulation, including requirements that the participant will:

(i) Not conduct any action that would defeat the program's purposes;



(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the program contract, consistent with the provisions of §1464.36; and

(iii) Supply information if required by NRCS to determine compliance with program requirements; and

(6) Specify any other provision determined necessary or appropriate by NRCS to ensure the program purpose is met.

(c) *Payment eligibility.* To be eligible to enter into a program contract or receive a payment, an applicant or participant must—

(1) Provide a tax identification number; however, where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(2) Indicate, where applicable, the percent interest share in a payment that is consistent with operation or ownership shares;

(3) Comply with the highly erodible land and wetland conservation provisions found at part 12 of this title at the time of application and throughout the contract term; and

(4) Be eligible for payments in accordance with part 1400 of this chapter, average adjusted gross income limitation, including any waiver of these requirements, prior to program contract approval.

(d) *Duplication of payment.* (1) Except as otherwise indicated in this paragraph, any payments received by a participant from a State, private entity, or person for the

implementation of one or more eligible activities on eligible land will be in addition to the payments provided to the participant under this part.

(2) NRCS will not issue financial assistance to a participant through a program contract for eligible activities on eligible land if the participant receives payments or other benefits for the same or similar eligible activity on the same land under any other conservation program administered by USDA.

(3) NRCS will not provide technical or financial assistance to a participant for more than one eligible activity to achieve the same resource benefit on the same land during the same time period.

**§ 1464.32 Modifications and transfers of land.**

(a) *Modifications.* NRCS may modify a program contract, if:

(1) The parties agree to the modification, and

(2) NRCS determines the modified program contract continues to meet the purposes of the program.

(b) *Notice of loss of effective control.* NRCS may terminate an entire program contract if, within the time specified in the program contract, the participant does not provide NRCS with written notice regarding any voluntary or involuntary loss of effective control of any acreage under the program contract, which includes changes in the participant's ownership structure or corporate form.

(c) *Approval of transfer.* NRCS may approve a transfer of a program contract if:

(1) NRCS has documented notice from the current participant that identifies the new producer who will take control of the acreage, as required in paragraph (e) of this section;

(2) The current participant transfers rights and responsibilities to the new producer;

(3) The new producer meets program eligibility requirements within a reasonable time frame, as determined by NRCS, and agrees to assume the rights and responsibilities from the current participant for the acreage under the program contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the current participant's losing effective control of all or a portion of the land under contract.

(d) *Payment status.* (1) Until NRCS approves the transfer of program contract rights, the transferee is not a participant in the program and may not receive payment for eligible activities implemented prior to NRCS approval of the program contract transfer.

(2) For program contract payment purposes, NRCS will consider the transferor to be the participant to whom payments may be made for eligible activities implemented when NRCS approval of the program contract transfer is pending.

(e) *Right to terminate.* NRCS may not approve a program contract transfer and may terminate the program contract in its entirety if NRCS determines that the loss of effective control of the land was voluntary, the participant's written notification of loss of effective control was not provided to NRCS within the specified timeframe, the new

producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

(f) *Run with the land.* Once an easement deed has been acquired, an easement will run with the land and bind all successors and assigns. Subordination, modification, exchange, or termination of an easement acquired under this part will be consistent with the policies and procedures under 7 CFR part 1468.

(g) *Reestablishment.* In the event an eligible activity fails through no fault of the participant, NRCS may issue payments to reestablish the eligible activity, subject to such limitations that NRCS may establish.

#### **§ 1464.33 Violations and remedies.**

(a) *Reasonable notice.* In the event of a violation of the program contract terms, NRCS will provide the participant written notice as specified in the program contract, and, where appropriate, a reasonable opportunity to voluntarily correct the violation in accordance with the terms of the program contract.

(b) *Voluntary correction.* If the participant fails to correct the violation of a term of the program contract in the timeframe specified by NRCS, NRCS may terminate the program contract or require modification as a condition to keep the program contract in effect.

(c) *Refund and right to future assistance.* If NRCS terminates a program contract due to a violation of its terms or conditions, the participant will forfeit any right to future assistance under the program contract and will refund all or part of any payments received by the participant, plus interest.

(d) *Liquidated damages.* (1) NRCS may include terms in a program contract that allow for the assessment of liquidated damages in the event of a violation.

(2) The amount of any liquidated damages will be set at an amount reasonably calculated to reimburse NRCS for its foreseeable losses in the event of a violation by the participant and will not be punitive in nature.

(3) NRCS will enforce a liquidated damage provision if the Chief determines doing so is in the best interests of RCPP.

(e) *Hardships.* (1) NRCS may allow a participant in a program contract terminated in accordance with the provisions of paragraph (b) of this section to retain a portion of any payments received appropriate to the effort the participant has made to comply with the program contract, or in cases of hardship, where NRCS determines that forces beyond the participant's control prevented compliance with the program contract.

(2) The condition that is the basis for the participant's inability to comply with the program contract must not have existed at the time the program contract was executed by the participant.

(3) If a participant believes that such a hardship condition exists, the participant may submit a written request to NRCS for relief pursuant to this paragraph and any such request will contain documentation sufficient for NRCS to determine that this hardship condition exists.

(f) *Death, incompetency, disappearance.* In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the program contract,

terminate the contract, make any payments due under this part pursuant to guidance under applicable provisions of parts 707 and 1400 of this title (including payment to successor(s)), or take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

(g) *Administrative errors.* NRCS reserves the right to correct any and all errors in entering data or the results of computations in a program contract. If a participant does not agree to such corrections, NRCS will terminate the program contract.

## **Subpart D—General Administration**

### **§ 1464.40 Appeals.**

(a) *Participants under program contracts.* A participant may obtain administrative review of an adverse decision under RCPP in accordance with parts 11 and 614 of this title. Any and all determination in matters of general applicability, such as payment rates, the designation of identified program or priority resource concerns, and eligible activities are not subject to appeal.

(b) *Lead partners and nonlead partners under partnership or supplemental agreements.*

(1) A lead partner or nonlead partner may obtain a review of any administrative determination concerning eligibility as a partner under the program or eligibility for financial assistance payments under an agreement that obligated financial assistance funds utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(2) NRCS provision of technical assistance funds under a partnership agreement or supplemental agreement are not subject to administrative review as the provision of such funds are to assist NRCS with its implementation of the program consistent with 16

U.S.C. 3842 and are not program payments or benefits to a lead partner or nonlead partner.

**§ 1464.41 Compliance with regulatory measures.**

Participants who implement eligible activities will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for their implementation consistent with applicable statutes and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

**§ 1464.42 Access to agricultural operation or tract.**

Any authorized NRCS representative will have the right to enter an agricultural operation or tract of land for the purposes of determining eligibility, conducting ranking and due diligence activities, and for ascertaining the accuracy of any representations related to agreement or contract performance. Access will include the right to provide technical assistance, determine eligibility, conduct ranking and onsite inspections prior to execution of an agreement or contract, inspect any actions undertaken under the agreement or contract, and collect information necessary to evaluate agreement or contract performance, as specified in the agreement or contract. The NRCS representative will attempt to contact the applicant or participant prior to exercising this provision.

**§ 1464.43 Equitable relief.**

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635; however, the financial or

technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

(b) If a participant has been found in violation of a program requirement through failure to comply fully with that requirement, the participant may be eligible for equitable relief under 7 CFR part 635.

**§ 1464.44 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, legal entity, joint operation, or Indian Tribe will be made without regard to questions of title to the payment 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 U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will apply to contract payments.

(b) Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

**§ 1464.45 Misrepresentation and scheme or device.**

(a) A person, legal entity, joint operation, or Indian Tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to payments under RCPP and must refund to NRCS all RCPP payments, plus interest, determined in accordance with part 1403 of this chapter.

(b) A participant will lose all interest in all contracts or agreements with NRCS and will refund to NRCS all payments, plus interest determined in accordance with part



1403 of this chapter, received by such participant with respect to all contracts and agreements if it is determined that the participant has knowingly:

- (1) Adopted any scheme or device that tends to defeat the purpose of the program;
- (2) Made any fraudulent representation to NRCS;
- (3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or
- (4) Misrepresented any fact affecting a program determination.

(c) If NRCS determines that a participant has violated the terms of a program contract, a lead partner has violated the terms of a partnership agreement, or a lead partner or nonlead partner has violated the terms of a supplemental agreement, NRCS may determine that the severity of the violation renders the participant, lead partner, or nonlead partner, respectively, ineligible for future NRCS conservation program consideration in accordance with applicable suspension and debarment regulations.

**§ 1464.46 Environmental credits for conservation improvements.**

NRCS recognizes that environmental benefits will be achieved by implementing eligible activities funded through RCPP, and a participant may obtain environmental credits as a result of implementing additional eligible activities through an environmental service market if one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with the purposes of a program contract or supplemental agreement. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M)

requirements for RCPP-funded eligible activities are met. Where the non-RCPP funded additional eligible activities may impact the land under a program contract or supplemental agreement, producers and participants are highly encouraged to request an O&M compatibility determination from NRCS prior to entering into any environmental credit agreements.

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