

# Rules and Regulations

Federal Register

Vol. 73, No. 225

Thursday, November 20, 2008

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1465

RIN 0578-AA50

#### Agricultural Management Assistance Program

**AGENCY:** Commodity Credit Corporation, United States Department of Agriculture.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) is amending the regulations for the Agricultural Management Assistance program (AMA). Section 2801 of the Food, Conservation, and Energy Act of 2008 (2008 Act) amended the Agricultural Management Assistance program (AMA) by: Expanding the program's geographic scope to include Hawaii; and providing \$15 million in mandatory funding for each of fiscal years 2008 through 2012. NRCS issues this interim final rule with request for comment to incorporate statutory changes resulting from the 2008 Act and to make administrative changes to improve program efficiency.

**DATES:** *Effective Date:* The rule is effective November 20, 2008. *Comment date:* Submit comments on or before January 20, 2009.

**ADDRESSES:** You may send comments (identified by Docket Number NRCS-IFR-08002) using any of the following methods:

- Government-wide rulemaking Web site: go to <http://www.regulations.gov> and follow the instructions for sending comments electronically.
- Mail: Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Agricultural Management Assistance Program

Comments, P.O. Box 2890, Room 5237-S, Washington, DC 20013.

- Fax: (202) 720-4265
- Hand Delivery: Room 5237-S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Office Building to call: (202) 720-4527 in order to be escorted into the building.

- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov/>; select the *Farm Bill* link from the menu; select the *Interim final* link from beneath the *Final and Interim Final Rules Index* title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720-2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:** Director, Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890; Phone: (202) 720-1844; Fax: (202) 720-4265; or e-mail: [AMA2008@wdc.usda.gov](mailto:AMA2008@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Certifications

###### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this interim final rule is a non-significant regulatory action under Executive Order 12866.

###### *Regulatory Flexibility Act*

NRCS has determined that the Regulatory Flexibility Act is not applicable to this interim final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

###### *Environmental Analysis*

The National Environmental Policy Act (NEPA) applies to "major Federal actions" where the agency has control and responsibility over the actions and has discretion as to how the actions will be carried out (40 CFR part 1508.18). Accordingly, any actions that are directed by Congress to be implemented in such manner that there is no discretion on the part of the agency are

not required to undergo an environmental review under NEPA. The lack of discretion over the action by the agency undermines the rationale for NEPA review—evaluation of the environmental impacts of the proposed action and consideration of alternative actions to avoid or mitigate the impacts. Where Congress has directed that a specific action be implemented and an agency has no discretion to consider and take alternative actions, NEPA review would be moot.

For AMA, Congress has mandated the addition of Hawaii to the list of States to which the Secretary is authorized to provide financial assistance. The Secretary of Agriculture is, therefore, required to make this addition to the program. There is no discretion on the part of the agency to take this action. For this reason, an environmental review of these changes under NEPA is not required.

###### *Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this interim final rule will not have a significant effect on minorities. Copies of the Civil Rights Impact Analysis may be obtained from Director, Financial Assistance Programs Division, U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), P.O. Box 2890, Washington, DC 20013-2890.

###### *Paperwork Reduction Act*

Section 2904 of the 2008 Act requires that implementation of programs authorized by Title II of the 2008 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

###### *Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

*Executive Order 12988*

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. Furthermore, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

*Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*

USDA classified this interim final rule as “not major” under Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104–354. Therefore, a risk assessment is not required.

*Unfunded Mandates Reform Act of 1995*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

**Discussion of Program**

The conservation provisions of AMA are administered and implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation (CCC). Accordingly, where NRCS is mentioned in this rule it also refers to the CCC's funds, facilities, and authorities where applicable. While NRCS has leadership for the conservation provisions of AMA, other agencies have authority for different aspects of the program. The Agricultural Marketing Service (AMS) has responsibility for the organic certification cost-share program and the Risk Management Agency (RMA) has responsibility for the insurance cost-share program for mitigation of financial risk.

Through AMA, NRCS provides technical and financial assistance to participants in eligible States to address issues, such as water management, water quality, and erosion control by incorporating conservation practices into their agricultural operations. Producers may construct or improve

water management structures or irrigation structures; plant trees for windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or organic farming.

Section 524(b) of the Federal Crop Insurance Act, as amended by Section 133 of the Agricultural Risk Protection Act of 2000, authorized AMA to provide assistance to producers in States that historically had low participation in the Federal Crop Insurance Program. The Farm Security and Rural Investment Act of 2002 (2002 Act) made amendments to AMA to specify the eligible States and provide additional clarity to the assistance to be made available. The AMA regulation (7 CFR part 1465) was published in the **Federal Register** on April 9, 2003.

Section 2801 of the 2008 Act amended AMA to include Hawaii as an eligible State, and to authorize \$15 million in funding each year from fiscal year (FY) 2008 through FY 2012. NRCS has evaluated seven years of program implementation and identified opportunities to improve program administration and alignment with other financial assistance programs administered by the Agency. The revisions to the AMA regulation, described below, reflect the changes mandated by the 2008 Act and opportunities to improve program administration for greater efficiency.

**Summary of Provisions***Section 1465.1, Purposes and Applicability*

Section 1465.1, “Purposes and Applicability,” sets forth the purpose, scope, and objectives of AMA. Through AMA, NRCS provides technical and financial assistance to producers in statutorily-designated States. Section 2801 of the 2008 Act expanded AMA's geographic scope to include the State of Hawaii. In response, NRCS revises § 1465.1 to add Hawaii to the list of States eligible for AMA assistance and replaces “15” with the number “16” when referring to the number of eligible States. AMA is now available in Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

*Section 1465.2, Administration*

Section 1465.2, “Administration,” describes the role of NRCS and provides a brief overview of the Agency's

administrative responsibilities. NRCS amends § 1465.2 to reflect the 2003 decision made by USDA to have NRCS administer the AMA natural resource conservation provisions and to clarify NRCS's relationship with the Commodity Credit Corporation (CCC). Prior to FY 2004, NRCS and the Farm Service Agency (FSA) jointly administered the AMA natural resource conservation provisions. A 2003 decision made by USDA transferred all administrative responsibilities to NRCS. Therefore, § 1465.2 is revised to remove reference to Farm Service Agency (FSA) and reflect that NRCS has the responsibility for issuing payments for conservation practices. NRCS also revises § 1465.2(c) to clarify that lower delegations of authority can be overridden by the Chief, if necessary, to uphold the purposes of AMA. This addition is consistent with other NRCS natural resource conservation programs.

*Section 1465.3, Definitions*

Section 1465.3 sets forth definitions for terms used throughout this regulation. Several new definitions have been added or revised to align AMA terms with terms used by other NRCS conservation programs. The following existing definitions are revised: “Applicant,” “Conservation district,” “Conservation practice,” “Contract,” “Indian Tribe,” “Liquidated damages,” “Participant,” “Producer,” “State Conservationist,” and “Technical assistance.” NRCS also replaces several existing terms with terms more reflective of AMA's purposes. The term, “Cost-share payment” is replaced with “Payment,” to reflect the breadth of the types of costs that may be considered in determining payments. The term “Indian trust lands” is replaced with the term “Indian land” to broaden the scope and align AMA with other NRCS conservation programs. Finally, the term “Conservation plan” is replaced with the term “AMA plan of operations (APO)” to align AMA with other NRCS conservation programs that identify a plan of operations. NRCS adds the following terms and definitions to the AMA regulations to be consistent with related conservation programs: “Agricultural land,” “Agricultural operation,” “Beginning farmer or rancher,” “Historically underserved producer,” “Joint operation,” “Legal entity,” “Limited resource farmer or rancher,” “Livestock,” “Natural Resources Conservation Service (NRCS),” “Nonindustrial private forest land,” “Operation and maintenance (O&M) agreement,” “Person,” “Resource concern,” “Socially disadvantaged farmer or rancher,” “Structural

practice,” and “Technical Service Provider (TSP).” The terms, “Unit of concern” and “State Technical Committees” are removed since they are no longer used in the AMA regulations.

Specifically, the following definitions have been amended:

NRCS adds the definition of “agricultural land” to better define the land where AMA assistance will be provided. Agricultural land is cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for the production of livestock.

NRCS adds the definition of “agricultural operation” to closely align AMA’s definitions with definitions used by other NRCS conservation programs. Section 1465.3 defines an “agricultural operation” as “a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.”

NRCS replaces the term, “conservation plan” with “AMA plan of operations” to ensure consistency across NRCS programs. Prior to this regulation, AMA participants developed and implemented an AMA plan of operations. The addition of this term and associated definition clarifies what constitutes an AMA plan of operations and clarifies existing processes and documentation procedures. An AMA plan of operations, which is part of the AMA contract, identifies the location and timing of conservation practices that the participant agrees to implement.

NRCS revises the definition, “applicant,” to simplify the definition and incorporate the 2008 Act’s references to “person” and “legal entity.” The term, “applicant,” is defined as follows: “a person, legal entity, or joint operation that has an interest in an agricultural operation, who has requested in writing to participate in AMA.”

NRCS adds the definition, “beginning farmer and rancher” in accordance with Section 2708 of the 2008 Act which seeks to expand conservation program participation among farmers and

ranchers who have been historically underserved. The definition of “beginning farmer and rancher” reflects the definition provided defined in 1201(a) of the Food Security Act of 1985. Generally speaking, a “beginning farmer or rancher” is an individual who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch. NRCS also revises the “conservation district” definition to reflect the 2008 Act’s definition. A conservation district means “any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program.” Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “natural resource district,” “land conservation committee,” or similar name.

NRCS revises “conservation practice” to clarify what is meant by conservation treatment. Specifically, a conservation practice means “one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that achieve program purposes.”

NRCS revises the definition of “contract” in an effort to make definitions consistent across other programs. A contract is “a legal document that specifies the rights and obligations of any participant in the program. An AMA contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.”

The term, “historically underserved producer,” merges the terms “beginning farmer or rancher,” “limited resource farmer or rancher,” and “socially disadvantaged farmer or rancher” into one definition to simplify terms within this regulation.

NRCS revises the definition of “Indian Tribe” to ensure the definition incorporates Alaska Native village corporations, as established pursuant to the Alaska Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

NRCS replaces the term and definition, “Indian trust land,” to make it consistent with the term and associated definition, “Indian land,” which is used by other NRCS

conservation programs. The “Indian land” definition encompasses lands which are also held in fee title by Indian tribes or Tribal members. Specifically, “Indian land” is “an inclusive term describing all lands held in trust by the United States for individual Indians or Tribes, or all lands, titles to which are held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain Tribes.”

NRCS adds the term, “joint operation,” to maintain consistency across all NRCS conservation programs. A joint operation is “a general partnership, joint venture, or other similar business arrangement, in which the members are jointly or severally liable for the obligations of the organization.”

NRCS adds the term, “legal entity,” to maintain consistency across all NRCS conservation programs. As defined by 7 CFR 1400, “a legal entity is 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.”

NRCS adds the term and associated definition “limited resource farmer,” in accordance with Section 2708 of the 2008 Act which seeks to expand conservation program participation among farmers and ranchers who have been historically underserved. The definition of “limited resource farmer” reflects the definition used in the Environmental Quality Incentive Program’s regulation, 7 CFR part 1466. Generally speaking, a limited resource farmer is a person with direct or indirect gross farms sales not more than \$155200 in each of the previous two years, who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of the county median household income in each of the two previous years.

NRCS revises the definition, “liquidated damages,” to make the definition consistent with the definition used by other NRCS conservation programs; however, the overall meaning of the term remains the same as the original regulation’s definition. Liquidated damages is “a sum of money stipulated in the AMA contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or non-feasibility

of otherwise obtaining an adequate remedy.”

NRCS adds the term, “livestock,” to maintain consistency across NRCS conservation programs. *Livestock* means “all animals produced on farms and ranches, as determined by the Chief.”

NRCS adds the term, “Natural Resources Conservation Service,” to define the USDA agency that has responsibility for administering AMA.

NRCS adds the term, “nonindustrial private forest land,” to further define land eligible for AMA assistance. Nonindustrial forest land is rural land that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decisionmaking authority over the land.

NRCS adds the term “operation and maintenance agreement” to describe the document that, in conjunction with the AMA plan of operations, specifies the participant’s operation and maintenance responsibilities for conservation practices installed with AMA assistance.

NRCS revises the definition of “participant,” to make it consistent with other NRCS conservation programs. A participant is “a person, joint operation, or legal entity who is receiving payment or is responsible for implementing an AMA contract’s terms and conditions.”

NRCS replaces the term, “cost share payment” with the term, “payment” to more adequately describe how participants will be compensated. *Payment* means the “financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: planning, design, materials, equipment, installation, labor, maintenance, management, or training, as well as the estimated income foregone by the producer for the designated conservation practices.”

NRCS adds the term, “person,” to maintain consistency across all NRCS conservation programs. As defined by 7 CFR part 1400, a person is “an individual, natural person and does not include a legal entity.”

NRCS expands upon the definition of “producer,” to include persons or entities involved in forestry management.

NRCS adds the term, “resource concern,” to maintain a consistency of terms across NRCS conservation programs. A resource concern is “a specific natural resource problem that represents a significant concern in a State or region and is likely to be

addressed successfully through the implementation of the conservation practices by producers.”

NRCS adds the term, “socially disadvantaged farmer or rancher,” in accordance with Section 2708 of the 2008 Act which seeks to expand conservation program participation among farmers and ranchers who have been historically underserved. A socially disadvantaged farmer or rancher is one “who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.”

NRCS revises the definition, “State Conservationist,” to clarify that the former State Conservationist of Hawaii has become the director of the Pacific Islands.

NRCS adds the term, “structural practice,” to better define a conservation practice that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner.

NRCS revises the term, “technical assistance,” to further clarify the nature of technical assistance under AMA, as well as the types of land where AMA technical assistance is available.

NRCS adds the term and definition, “Technical Service Provider (TSP)” to clarify that participants may receive technical assistance from an individual, private-sector entity, or public agency certified by NRCS to provide technical services, in lieu of or on behalf of NRCS.

#### *Section 1465.4, National Priorities*

NRCS inserts a new § 1465.4, entitled “National Priorities,” and redesignates the subsequent sections accordingly. The new § 1465.4 provides that NRCS establishes national priorities to guide funding allocations to States, selection of AMA contracts, and implementation priority for AMA conservation practices. This new section also states that the national priorities are reviewed periodically by NRCS to ensure that the program is addressing priority conservation concerns. This addition improves AMA consistency with related conservation programs administered by NRCS.

#### *Section 1465.5, Program Requirements*

Section 1465.5, “Program requirements,” sets forth land and applicant eligibility. Throughout the Section the terminology is revised to make it consistent with the terms used in § 1465.3, “Definitions.”

Specifically, NRCS revises paragraph (a), replacing the term, “cost share”

payment with the term, “payment,” to more adequately reflect the type of payments a participant may receive. NRCS also replaces the term, “conservation plan,” with the term, “AMA plan of operations,” to describe the specific document that contains the conservation practice implementation schedule.

NRCS revises paragraph (c)(2), which requires that the applicant provide written evidence of ownership or legal control for the life of the contract and its associated O&M agreement, which is consistent with additions in §§ 1465.3 and 1465.22. NRCS also revises paragraph (c)(4) to clarify that additional information required by NRCS is for the purposes of assessing a proposed project’s merits and to assist in monitoring contract compliance.

Section 1465.5 is revised to incorporate existing program requirements that previously have not been included in the AMA regulations because they apply via other statutory provisions. In particular, NRCS revises § 1465.5(c)(6) to clarify that AMA participants are subject to AGI limitations, 7 CFR Part 1400 and amendments to Section 1001D of the Food Security Act of 1985 as authorized by Section 1604 of Title I of the 2008 Act. The AGI and program eligibility requirements also necessitate that NRCS obtain from legal entities a list of members, including members in embedded entities, along with their social security numbers, and percent interest in the legal entity. Specifically, text has been added to § 1465.5, “Program requirements,” that requires participants to “supply other information, as required by NRCS, to determine payment eligibility as established by 7 CFR 1400, Adjusted Gross Income (AGI).” This revision also makes AMA consistent with other NRCS conservation programs.

Paragraph (c) is revised to further clarify that applicants must provide a list of all members of the legal entity and embedded entities along with members’ social security numbers and percentage interest in the entity. In the event an applicant uses a unique identification number rather than a social security or tax identification number, the unique identification number must be used universally for any and all AMA contracts. The original subparagraph 1465.5(c)(4) has been removed as it is redundant with § 1465.5(c)(6), and subparagraph 1465.5(c)(5) has been redesignated as § 1465.5(c)(8). Subparagraph 1465.5(c)(10) is added to clarify that a participant must develop and agree to comply with an APO and to describe the

Agency expectation regarding the O&M agreement.

NRCS adds new program requirements in paragraph (c)(9) to improve program administration and ensure that AMA program goals are met. A provision is added that requires AMA participants to be in compliance with terms of all other USDA-administered agreements to which they are a party. In this manner, NRCS ensures that a participant who receives NRCS conservation program benefits is meeting existing responsibilities prior to receiving additional assistance.

Sections 1465.5(d)(2)(i) through § 1465.5(d)(2)(iii) are redesignated as § 1465.5(d)(2)(A), § 1465.5(d)(2)(B), and § 1465.5(d)(2)(C), respectively. In an effort to make AMA consistent with other programs, the language contained within paragraph (d)(2) that addresses enrolling public land is slightly revised, although the overall intent of the language remains the same.

#### *Section 1465.6, AMA Plan of Operations*

NRCS inserts a new section § 1465.6, entitled “AMA plan of operations,” which describes the AMA plan of operations as the document that contains the information related to practices and activities to be implemented under AMA. Section 1465.6 specifies the requirements for the APO and that participants are responsible for implementing the APO. This addition brings AMA into alignment with other NRCS conservation programs. Subsequent sections are redesignated accordingly.

#### *Section 1465.7, Conservation Practices*

Section 1465.7, “Conservation practices,” describes how NRCS determines eligible conservation practices. Specifically, § 1465.7(a) is revised to clarify that NRCS will identify and provide public notice of the conservation practices eligible for payments under the program. This revision improves AMA consistency with related NRCS conservation programs. The reference to “State Technical Committees” providing advice on the types of conservation practices eligible for payment is removed, since State Technical Committees are permitted only to provide advice on conservation programs, authorized by Title XII of the Food Security Act of 1985. AMA is authorized by the Federal Crop Insurance Act; therefore, State Technical Committees are not authorized to provide advice on AMA.

### **Subpart B—Contracts**

#### *Section 1465.20, Application for Participation and Selecting Applications for Contracting*

Section 1465.20, “Application for participation and selecting applications for contracting,” describes the processes for submitting and selecting applications. This Section remains the same; however, the term, “national priorities,” is inserted in paragraphs (c) and (d) to account for the policy outlined in § 1465.4, “National priorities.” The reference to “State Technical Committees” providing advice on AMA ranking criteria is removed, since State Technical Committees are permitted only to provide advice on conservation programs, authorized by Title XII of the Food Security Act of 1985. AMA is authorized by the Federal Crop Insurance Act; therefore, State Technical Committees are not authorized to provide advice on AMA.

#### *Section 1465.21, Contract Requirements*

Section 1466.21, “Contract requirements,” identifies elements contained within an AMA contract and the responsibilities of the participant who is party to the AMA contract. Specifically, paragraph (a) is revised to change the term “cost-share payments” to “payments,” and clarify that costs related to technical services may be included in the contract. This revision does not change current program practice.

Under § 1465.21(b)(2), contract duration is revised from 3 to 10 years to a minimum duration of one year after completion of the last practice, and a maximum of 10 years. This provides the flexibility needed for establishing agreement lengths based on conservation concerns and other factors, and aligns AMA with other conservation programs administered by NRCS.

Overall, § 1465.21(b) is restructured to account for additions to the section and to make the formatting consistent throughout the AMA regulations, although with the exception of replacing the terms, “contract and conservation plan” with “APO,” the text has not changed. Accordingly, subparagraphs 1465.21(b)(3)(i) through 1465.21(b)(3)(iv) are redesignated as 1465.21(b)(3)(A) through 1465.21(b)(3)(D).

#### *Section 1465.22, Conservation Practice Operation and Maintenance*

Section 1465.22, “Conservation practice operation and maintenance,” addresses the participant’s

responsibility for operating and maintaining conservation practices. Section 1465.22 is divided into logical content paragraphs and revised to be consistent with the O&M agreement definition in § 1465.3. NRCS revised § 1465.22 to clarify that the O&M agreement is part of the AMA contract. The O&M agreement specifies the terms and conditions under which the participant must operate and maintain the conservation practices installed with AMA assistance. This section also clarifies that NRCS may periodically inspect conservation practices to ensure that they are being maintained for the conservation practice lifespan as detailed in the O&M agreement. In the event that NRCS finds that a participant is not operating and maintaining practices for the specified lifespan during the contract duration, NRCS may request a refund of payments in accordance with the AMA contract. NRCS has created an O&M agreement to articulate the Agency’s expectation that the participant is responsible for maintaining each conservation practice. NRCS has developed this O&M agreement for two reasons: (1) To increase transparency of a participant’s contract responsibilities; and (2) To ensure these conservation practices are maintained for the length in time in which they were designed and created.

NRCS adds § 1465.22(d) to clarify to the participant that conservation practices installed before contract approval, but included in the application in order to obtain ranking points, must be operated and maintained as specified in the contract and O&M agreement. This addition is consistent with other NRCS conservation programs’ policies.

#### *Section 1465.23, Payments*

The Section title is revised from “Cost-share payments” to “Payments” to reflect the variety of costs that are considered in establishing program payments. Accordingly, the term “cost-share payment” is replaced by “payment” throughout the Section. This section addresses payments and payment limitations applicable to a participant. Subparagraphs 1465.23(a)(1), 1465.23(a)(2), 1465.23(a)(3), 1465.23(b), 1465.23(c), and 1465.23(d) are redesignated as 1465.23(a), 1465.23(b), 1465.23(c), 1465.23(d), 1465.23(e), 1465.23(f), and 1465.23(g), respectively, to accommodate additions to the section and to make the formatting consistent throughout the AMA regulations.

Section 1465.23(a) is revised to allow payments of “up to 75 percent of the estimated cost of an eligible practice

and up to 100 percent of the estimated income foregone” rather than providing a flat rate of 75 percent. Allowing for a range of payment rates makes it possible to provide reduced rates where participants can implement a conservation practice at a lower cost. This allows the opportunity to distribute AMA funds to more participants. A new section 1465.23(a)(2) is added to allow historically underserved producers to receive the applicable payment rate plus an additional rate that is not less than 25 percent, provided that this increase does not exceed 90 percent. These changes implement the 2008 Act’s emphasis on encouraging participation by those who have been historically underserved and are consistent with other related NRCS conservation programs.

Section 1465.23(c) is revised to clarify how conservation practices implemented or initiated prior to AMA contract approval will be handled. Section 1465.23(c)(1) states that payments will not be made for practices applied prior to contract approval. Section 1465.23(c)(2) describes that practices initiated prior to contract approval are not eligible for payment, unless the participant had obtained a waiver in advance from the State or Designated Conservationist. This revision aligns AMA with other NRCS-administered conservation programs.

NRCS revises § 1465.23(e) as follows: § 1465.23(e) is expanded to include the statutory reference of the “Payment Limitation and Payment Eligibility” at 7 CFR part 1400. NRCS will attribute payments to each participating person and legal entity using the same protocol outlined in 7 CFR part 1400 for commodity and conservation programs. This is consistent with other conservation programs administered by NRCS. Subparagraphs 1465.23(c)(i) through 1465.23(c)(iv) are removed as the majority of the provisions are addressed by reference to 7 CFR part 1400 in the Section.

Section 1465.23(f) is added to state that payments will not be made for conservation practices on eligible land if payments are already being received for the same practice on the same land under a USDA conservation program. These additions are consistent with other related conservation programs administered by NRCS.

Section 1465.23(h) is added to state that subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs. NRCS adds this paragraph to enable the Agency to

adjust payments to accommodate for inflation, higher fuel costs, and increased labor, which impact the cost of implementing a conservation practice.

#### *Section 1465.24, Contract Modifications, Extensions, and Transfers of Land*

Section 1465.24, “Contract modifications, extensions, and transfers of land,” addresses contract modifications, changes in land ownership or control of the land, and contract implications if the participant loses control of the land. Specifically, § 1465.24(a) is revised to state that when an AMA contract is revised, the APO also must be revised. The designated conservationist must approve the modified contract. This new language is consistent with modifications made in § 1465.6 and with other conservation programs administered by NRCS.

Language related to contract extensions for up to the 10-year limit is deleted in § 1465.24(b) because contract duration is addressed in § 1465.21(b)(2). New language is included to clarify that participants are responsible for notifying NRCS if they anticipate loss of control of the land. This addition is consistent with other related conservation programs administered by NRCS.

Section 1465.24(c) is revised to clarify contract transfer issues related to division of payments and transferee eligibility. Subparagraphs 1465.24(c)(1) and 1465.24(c)(2) explain the requirements for a transferee to receive payments, the obligations of the transferee to comply with the terms of the contract and O&M agreement, and the rights of the parties in distribution of payments. This revision brings AMA into alignment with related conservation programs administered by NRCS.

Section 1465.24(e) is added to clarify that participants to a contract will be jointly and severally responsible for refunding payments. The language is consistent with related NRCS-administered conservation programs.

Section 1465.24(f) is added to ensure that in the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the conservation practice, in accordance with established payment rates and limitations.

#### *Section 1465.25, Contract Violations and Terminations*

Section 1465.25, “Contract violations and terminations,” addresses the procedures that NRCS takes where a

violation has occurred or a contract termination is necessary. Section 1465.25 is revised to account for additions to the Section and to make the formatting consistent throughout the AMA regulations. Section 1465.25(a) is revised by removing the term “reasonable” as it is too subjective and replaces it with “60 days, unless otherwise determined by the State Conservationist.” This language is consistent with related NRCS-administered conservation programs. Subparagraphs 1465.25(a)(1) and 1465.25(a)(2) are redesignated as § 1465.25(a) and § 1465.25(b), respectively.

The terms “scheme or device” are added to § 1465.25(b) to be clear that such actions may result in contract violation or termination. This revision is consistent with § 1465.35 and with related conservation programs administered by NRCS. Subparagraphs 1465.25(b)(1), 1465.25(b)(2), 1465.25(b)(3), 1465.25(b)(4), and 1465.25(b)(5) are redesignated as 1465.25(c), 1465.25(c)(2), 1465.25(c)(2)(A), 1465.25(c)(2)(B), and 1465.25(c)(2)(C), respectively.

Section 1465.25(c) is revised as follows: § 1465.25(c) is expanded to clarify that participants who are in violation of AMA contracts may be ineligible for future NRCS-administered conservation program funding. The language is consistent with other NRCS conservation programs. Subparagraph 1465.25(c)(2)(A) is revised to clarify that hardship claims must be well documented and must result from conditions that did not exist prior to application to the program. This revision is consistent with related conservation programs administered by NRCS.

### **Subpart C—General Administration**

#### *Section 1465.30, Appeals*

Section 1465.30, “Appeals,” references the policies that govern when a producer seeks an appeal to an adverse decision made by NRCS. NRCS has not made any substantive changes to this section, other than formatting. The following formatting changes are made to § 1465.30: § 1465.30(b)(4)(i) through § 1465.30(b)(4)(iii) are redesignated as § 1465.30(b)(4)(A), § 1465.30(b)(4)(B), and § 1465.30(b)(4)(C), respectively.

#### *Section 1465.31, Compliance With Regulatory Measures*

No changes have been made in this section.

*Section 1465.32, Access to Operating Unit*

Section 1465.32, "Access to operating unit," provides notice to applicants, participants, and the public that NRCS has the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations related to contract performance. Section 1465.32 is amended to notify potential AMA applicants that an authorized NRCS representative may enter an agricultural operation for the purposes of eligibility determinations. NRCS will continue to provide the participant notice, prior to entering the property.

*Section 1465.33, Equitable Relief*

The caption of § 1465.33 is changed from "Performance based upon advice or action or representatives of NRCS" to "Equitable relief" to be consistent with related NRCS-administered conservation programs. Section 1465.33, "Equitable relief," outlines the policy when a participant relies upon erroneous advice provided by NRCS. Specifically, § 1465.33 is divided into two paragraphs. Paragraph 1465.33(b) is revised to add that any action the participant has taken based on the advice of a certified TSP is the responsibility of that certified TSP. The language clarifies program administration and is consistent with other NRCS conservation programs.

Paragraph 1465.33(c) clarifies that AMA participants who acted in good faith based on erroneous information provided by NRCS or its representatives may be entitled to equitable relief. This revision makes AMA consistent with other conservation programs administered by NRCS.

*Section 1465.34, Offsets and Assignments*

Section 1465.34, "Offsets and assignments," governs offsets and withholdings, as well as assignment of payments. The term "person" is changed to "participant" to reflect that this policy applies to persons, joint operations, and legal entities who are party to an AMA contract.

*Section 1465.35, Misrepresentation and Scheme or Device*

Section 1465.35, "Misrepresentation and scheme or device," outlines the policies governing producers who have erroneously or fraudulently represented themselves. Section 1465.35 is revised to improve transparency related to the participant actions and consequences of engaging in misrepresentation or scheme or device. This revision aligns AMA with other NRCS conservation programs.

Paragraph 1465.35(b) expands on the actions that may be deemed misrepresentation or scheme or device to include any action intended to deprive a tenant or sharecropper of entitled payments. These revisions are consistent with other NRCS conservation programs.

Paragraph 1465.35(c) is added to clarify that if paragraphs § 1465.35(a) or § 1465.35(b) apply to a participant, their interest in all contracts will be terminated and they may be determined ineligible for future funding from any NRCS conservation programs.

*Section 1465.36, Environmental Services Credits for Conservation Improvements*

Section 1465.36 is added to provide clarity related to environmental credits that may be produced on lands under AMA contracts. It establishes that NRCS asserts no interest in credits earned, but that the Agency retains the authority to ensure that the requirements for AMA-funded improvements are met and maintained consistent with the terms of the contract. Where activities may affect the land covered by an AMA contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into any environmental credit agreements. This provision is consistent with other conservation programs administered by NRCS.

**List of Subjects in 7 CFR Part 1465**

Conservation contract, Conservation plan, Conservation practices, Soil and water conservation.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service revises Part 1465 of Title 7 of the Code of Federal Regulations to read as follows:

**PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE****Subpart A—General Provisions**

Sec.

- 1465.1 Purposes and applicability.
- 1465.2 Administration.
- 1465.3 Definitions.
- 1465.4 National priorities.
- 1465.5 Program requirements.
- 1465.6 AMA plan of operations.
- 1465.7 Conservation practices.

**Subpart B—Contracts**

- 1465.20 Applications for participation and selecting applications for contracting.
- 1465.21 Contract requirements.
- 1465.22 Conservation practice operation and maintenance.
- 1465.23 Payments.
- 1465.24 Contract modification, extension, and transfer of land.

1465.25 Contract violations and termination.

**Subpart C—General Administration**

- 1465.30 Appeals.
- 1465.31 Compliance with regulatory measures.
- 1465.32 Access to operating unit.
- 1465.33 Equitable relief.
- 1465.34 Offsets and assignments.
- 1465.35 Misrepresentation and scheme or device.
- 1465.36 Environmental Services Credits for Conservation Improvements.

**Authority:** 7 U.S.C. 1524(b).

**Subpart A—General Provisions****§ 1465.1 Purposes and applicability.**

Through the Agricultural Management Assistance program (AMA), the Natural Resources Conservation Service (NRCS) provides financial assistance funds annually to producers in 16 statutorily designated States to: Construct or improve water management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or the transition to organic farming. AMA is applicable in Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

**§ 1465.2 Administration.**

(a) Administration and implementation of the conservation provisions of AMA for the Commodity Credit Corporation (CCC) is assigned to the NRCS, using the funds, facilities, and authorities of the CCC. Accordingly, where NRCS is mentioned in this Part, it also refers to the CCC's funds, facilities, and authorities, where applicable.

(b) NRCS will:

- (1) Provide overall management and implementation leadership for AMA;
- (2) Establish policies, procedures, priorities, and guidance for implementation;
- (3) Establish payment limits;
- (4) Determine eligible practices;
- (5) Develop and approve AMA plans of operation and contracts with selected participants;
- (6) Provide technical leadership for implementation, quality assurance, and evaluation of performance;
- (7) Make funding decisions and determine allocations of AMA funds; and
- (8) Issue payments for conservation practices completed.

(c) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS from determining any issues arising under this Part or from reversing or modifying any determination made under this Part.

#### § 1465.3 Definitions.

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

*Agricultural land* means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural or forest-related products or livestock are produced. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

*Agricultural operation* means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

*AMA plan of operations (APO)* means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to address the resource concerns and program purposes. The APO is part of the AMA contract.

*Applicant* means a person, legal entity, or joint operation that has an interest in an agricultural operation, as defined in 7 CFR 1400, who has requested in writing to participate in AMA.

*Beginning farmer or rancher* means a person or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(2) 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 or ranch is located.

(3) 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. 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, United States Department of Agriculture (USDA), or designee.

*Conservation district* means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or similar name.

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that achieve program purposes.

*Contract* means a legal document that specifies the rights and obligations of any participant accepted into the program. An AMA contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.

*Designated conservationist* means an NRCS employee whom the State Conservationist has designated as responsible for AMA administration in a specific area.

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

*Indian land* is an inclusive term describing all lands held in trust by the United States for individual Indians or Tribes, or all lands, titles to which are held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain Tribes. For purposes of this Part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government-owned land under the Bureau of Indian Affairs jurisdiction.

*Indian Tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) 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 7 CFR part 1400, 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.

*Legal entity* means, as defined in 7 CFR part 1400, 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.

*Lifespan* means the period of time in which a conservation practice should be operated and maintained and used for the intended purpose.

*Limited resource farmer or rancher* means:

- (1) A person with direct or indirect gross farm sales of not more than \$155,200 in each of the previous two years (adjusted for inflation using the Prices Paid by Farmer Index as compiled by the National Agricultural Statistics Service), and
- (2) 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 two years (to be determined annually using Commerce Department data).

*Liquidated damages* means a sum of money stipulated in the AMA contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Livestock* means all animals produced on farms and ranches, as determined by the Chief.

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

*Nonindustrial private forest land* means rural land that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other

private legal entity that has definitive decision-making authority over the land.

*Operation and maintenance* means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Operation and maintenance (O&M) agreement* means the document that, in conjunction with the APO, specifies the operation and maintenance responsibilities of the participants for conservation practices installed with AMA assistance.

*Participant* means a person, legal entity, or joint operation who is receiving payment or is responsible for implementing the terms and conditions of an AMA contract.

*Payment* means the financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: Planning, design, materials, equipment, installation, labor, maintenance, management, or training, as well as the estimated income foregone by the producer for the designated conservation practices.

*Person* means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

*Producer* means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to 7 CFR part 1400, or who is engaged in agricultural production or forestry management.

*Resource concern* means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by producers.

*Secretary* means the Secretary of the USDA.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State,

the Caribbean Area, or the Pacific Island Area.

*Structural practice* means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

*Technical assistance* means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following: (1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and (2) technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Technical Service Provider (TSP)* means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants or in lieu of or on behalf of NRCS.

#### § 1465.4 National priorities.

(a) The Chief, with advice from State Conservationists, will identify national priorities to achieve the conservation objectives of AMA.

(b) National priorities will be used to guide annual funding allocations to States.

(c) State Conservationists will use national priorities in conjunction with State and local priorities to prioritize and select AMA applications for funding.

(d) NRCS will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local level to adapt the program to address emerging resource issues.

#### § 1465.5 Program requirements.

(a) Participation in AMA is voluntary. The participant, in cooperation with the local conservation district, applies for

practice installation for the agricultural operation. The NRCS provides payments through contracts to apply needed conservation practices within a time schedule specified in the APO.

(b) The Chief determines the funds available for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out AMA in consideration of national priorities established under § 1465.4.

(c) To be eligible to participate in AMA, an applicant must:

(1) Own or operate an agricultural operation within an applicable State, as listed in § 1465.1;

(2) Provide NRCS with written evidence of ownership or legal control for the life of the proposed contract, including the O&M agreement. An exception may be made by the Chief:

(i) In the case of land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; or

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide NRCS with the written concurrence of the landowner in order to apply a structural practice(s);

(3) Submit an application form NRCS-CPA-1200, which is located electronically at <http://www.nrcs.usda.gov/programs/AMA/index.html>;

(4) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor contract compliance;

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(6) Supply other information, as required by NRCS, to determine payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI);

(7) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other AMA contracts to which the participant is a party.

Violators will be considered to have provided fraudulent representation and be subject to full penalties of § 1465.25;

(8) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative

association of producers that markets commodities for producers shall not be considered to be a person eligible for payment;

(9) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party; and

(10) Develop and agree to comply with an APO and O&M agreement, as described in § 1465.3.

(d) Land may only be considered for enrollment in AMA if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is a working component of the participant's agricultural and forestry operation; and

(ii) The participant has control of the land for the term of the contract; and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern that is on private land; or

(3) The land is federally recognized Tribal, BIA allotted, or Indian land.

#### **§ 1465.6 AMA plan of operations.**

(a) All conservation practices in the APO must be approved by NRCS and developed and carried out in accordance with the applicable NRCS technical guidance.

(b) The participant is responsible for implementing the APO.

(c) The APO must include:

(1) A description of the participant's specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation system, including conservation planning, design, or installation activities, to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(d) An APO may be modified in accordance with § 1465.24.

#### **§ 1465.7 Conservation practices.**

(a) The State Conservationist will determine the conservation practices eligible for AMA payments. To be

considered eligible conservation practices, the practices must meet the purposes of the AMA as set out in § 1465.1. A list of eligible practices will be available to the public.

(b) The APO includes the schedule of operations, activities, and payment rates of the practices needed to solve identified natural resource concerns.

#### **Subpart B—Contracts**

##### **§ 1465.20 Applications for participation and selecting applications for contracting.**

(a) Any producer who has eligible land may submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance, national priorities, and the State-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist will develop ranking criteria and a ranking process to select applications, taking into account national, State, Tribal, and local priorities.

(d) The State Conservationist or designated conservationist using a locally led process will evaluate, rank and select applications for contracting based on the State-developed ranking criteria and ranking process.

(e) The State Conservationist or designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

##### **§ 1465.21 Contract requirements.**

(a) In order for a participant to receive payments, the participant shall enter into a contract agreeing to implement one or more eligible conservation practices. Costs for technical services may be included in the contract.

(b) An AMA contract will:

(1) Incorporate by reference all portions of an agricultural operation receiving AMA assistance;

(2) Be for a minimum duration of one year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the agricultural operation that would tend to defeat the purposes of the contract according to § 1465.25;

(ii) Refund any AMA payments received with interest, and forfeit any future payments under AMA, on the

violation of a term or condition of the contract, consistent with the provisions of § 1465.25;

(iii) Refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the AMA contract's conservation practices, consistent with the provisions of § 1465.24; and

(iv) Supply information as required by NRCS to determine compliance with the contract and requirements of AMA.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1465.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply the practice(s) according to the schedule set out in the APO.

##### **§ 1465.22 Conservation practice operation and maintenance.**

(a) The contract will incorporate the O&M agreement that describes the lifespan and operation and maintenance of the conservation practices applied under the contract.

(b) The O&M agreement incorporates the Agency expectation that the participant will operate and maintain the conservation practice(s) installed under the contract for its intended purpose for the lifespan of the conservation practice, as specified in the O&M agreement.

(c) NRCS may periodically inspect the conservation practice(s) during the contract duration to ensure that operation and maintenance requirements are being carried out, and that the conservation practice is fulfilling its intended objectives.

(d) Conservation practices installed before the contract execution, but included in the contract to obtain the environmental benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

##### **§ 1465.23 Payments.**

(a) The Federal share of payments to a participant will be:

(1) Up to 75 percent of the estimated incurred cost or 100 percent of the estimated income foregone of an eligible practice, except as provided in paragraph (a)(2) of this section.

(2) In the case of historically underserved producers, the payment rate will be the applicable rate and an additional rate that is not less than 25

percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated incurred costs or estimated income foregone.

(3) In no instance shall the total financial contributions for an eligible practice from other sources exceed 100 percent of the estimated incurred cost of the practice.

(b) Participants may contribute their portion of the estimated costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the NRCS standard and specifications for the practice being installed.

(c) Payments for practices applied prior to application or contract approval—

(1) Payments will not be made to a participant for a conservation practice that was applied prior to application for the program.

(2) Payments will not be made to a participant for a conservation practice that was initiated or implemented prior to contract approval, unless the participant obtained a waiver from the State Conservationist or designated conservationist prior to practice implementation

(d) The total amount of payments paid to a participant under this Part may not exceed \$50,000 for any fiscal year.

(e) For purposes of applying the payment limitations provided for in this section, NRCS will use the provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility.

(f) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice on the same land under any other conservation program administered by USDA.

(g) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before NRCS will approve any Payment.

(h) Subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs.

#### **§ 1465.24 Contract modifications, extensions, and transfers of land.**

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the APO is revised in accordance with NRCS requirements, and the designated conservationist approves the modified contract.

(b) It is the participant's responsibility to notify NRCS when he/she either

anticipates the voluntary or involuntary loss of control of the land.

(c) The participant and NRCS may mutually agree to transfer a contract to another party.

(1) To receive an AMA payment, the transferee must be determined by NRCS to be eligible to participate in AMA and shall assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) With respect to any and all payment owed to participants who wish to transfer ownership or control of land subject to a contract, the division of payment shall be determined by the original party and the party's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(d) NRCS may require a participant to refund all or a portion of any assistance earned under AMA if the participant sells or loses control of the land under an AMA contract and the successor in interest is not eligible or refuses to accept future payments to participate in the AMA or refuses to assume responsibility under the contract.

(e) The participants to the contract shall be jointly and severally responsible for refunding the payments with applicable interest pursuant to paragraph (d) of this section.

(f) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the conservation practice, at the rates established in accordance with § 1465.23, provided such payments do not exceed the payment limitation requirements as set forth in § 1465.23.

#### **§ 1465.25 Contract violations and termination.**

(a) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or documents incorporated by reference into the contract, NRCS shall give the participant notice and 60 days, unless otherwise determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the AMA contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination shall be effective immediately upon a determination by the State Conservationist that the

participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1465.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract, the participant shall forfeit all rights to future payments under the contract and refund all or part of the payments received, plus interest. Participants violating AMA contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) The State Conservationist may require only a partial refund of the payments received if the State Conservationist determines that a previously installed conservation practice can function independently, is not affected by the violation or the absence of other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages depending upon the circumstances of the case.

(i) When making all contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If the participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) The participant may voluntarily terminate a contract if NRCS agrees based on NRCS's determination that termination is in the public interest.

(iii) In carrying out NRCS's role in this section, NRCS may consult with the local conservation district.

**Subpart C—General Administration****§ 1465.30 Appeals.**

(a) A participant may obtain administrative review of an adverse decision under AMA in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

- (1) Payment rates, payment limits;
- (2) Funding allocations;
- (3) Eligible conservation practices; and
- (4) Other matters of general applicability, including:
  - (i) Technical standards and formulas;
  - (ii) Denial of assistance due to lack of funds or authority; or
  - (iii) Science-based formulas and criteria.

**§ 1465.31 Compliance with regulatory measures.**

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

**§ 1465.32 Access to operating unit.**

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of determining eligibility and for ascertaining the accuracy of any representations related to contracts and performance. Access shall include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the contracts, including the APO and O&M agreement; and collect information necessary to evaluate the conservation practice performance as specified in the contracts. The NRCS representative shall make an effort to contact the participant prior to exercising this provision.

**§ 1465.33 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, the State Conservationist may grant relief to the extent it is deemed appropriate by NRCS. Where a participant believes that detrimental reliance on the advice or

action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR part 635.

(b) The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(c) If, during the term of an AMA contract, a participant has been found in violation of a provision of the contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

**§ 1465.34 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) AMA participants may assign any payments in accordance with 7 CFR part 1404.

**§ 1465.35 Misrepresentation and scheme or device.**

(a) A participant who is determined to have erroneously represented any fact affecting an AMA determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments plus interest, as determined in accordance with 7 CFR part 1403.

(b) A participant shall refund to NRCS all payments, plus interest, as determined by NRCS, with respect to all NRCS contracts to which they are a party if they are determined to have knowingly:

- (1) Adopted any scheme or device that tends to defeat the purpose of AMA;
  - (2) Made any fraudulent representation;
  - (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 an AMA determination.
- (c) Where paragraph (a) or paragraph (b) of this section apply, the

participant's interest in all contracts shall be terminated. In accordance with § 1465.25(c), NRCS may determine the producer ineligible for future funding from any NRCS conservation programs.

**§ 1465.36 Environmental Services Credits for Conservation Improvements.**

USDA recognizes that environmental benefits will be achieved by implementing conservation practices funded through AMA, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an AMA contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that the requirements for AMA funded improvements are met and maintained consistent with § 1465.22. Where activities required under an environmental credit agreement may affect land covered under an AMA contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

Dated: November 12, 2008.

**Arlen L. Lancaster,**  
Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.  
[FR Doc. E8-27398 Filed 11-19-08; 8:45 am]  
BILLING CODE 3410-05-P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 93**

[Docket No. APHIS-2008-0108]

**Remove South Carolina From the Lists of States Approved To Receive Stallions and Mares From CEM-Affected Regions**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.  
**ACTION:** Final rule.

**SUMMARY:** We are amending the animal importation regulations by removing South Carolina from the lists of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis. This action is necessary because South Carolina no longer offers contagious equine metritis quarantine or treatment services and has requested removal from the lists.

**DATES:** *Effective Date:* November 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ellen Buck, Senior Staff Veterinarian,