

# Rules and Regulations

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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, Natural Resources Conservation Service, United States Department of Agriculture  
**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the policies and procedures implementing the Agricultural Management Assistance Program (AMA). The Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), published an interim final rule with request for comment on November 20, 2008 (73 FR 70245). NRCS issues this final rule to address public comments received during the 60-day public comment period and to clarify policies to improve program implementation.

**DATES:** *Effective Date:* The rule is effective December 8, 2009.

**ADDRESSES:** This final rule may be accessed via the Internet at: <http://www.nrcs.usda.gov/programs/farbill/2008/index.html>, or the government-wide rulemaking Web site: at <http://www.regulations.gov>, (identified by Docket Number NRCS-FR-09050).

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:** Gregory Johnson, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250;

Telephone: (202) 720-1844; Fax: (202) 720-4265.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Certifications

###### *Executive Order 12866*

The Office of Management and Budget has determined that this 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 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 rulemaking with respect to the subject matter of this rule.

###### *Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The Department of Agriculture (USDA) has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this final rule does not have Federalism implications.

###### *Executive Order 13175*

This final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian tribal governments. NRCS has assessed the impact of this final rule on Indian tribal governments and has concluded that this rule will not 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.

###### *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, a NEPA review would be moot.

For AMA, the interim final rule noted that Congress mandated the addition of Hawaii to the list of States to which the Secretary of Agriculture is authorized to provide financial assistance. The Secretary 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 was not required nor prepared for the interim final rule.

For this final rulemaking, NRCS has determined there are a few minor discretionary changes that should be made. The majority of these changes are administrative, technical, or corrections to the regulation. The primary change is the expansion of the definition of eligible lands to include those lands that are publicly owned. The agency believes that any potential effects from this minor change to the human environment have been sufficiently analyzed in the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact issued for AMA on March 23, 2003, which included public lands in the definition of eligible lands. As a result, a new Programmatic EA is not warranted.

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

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this final rule discloses no disproportionately adverse impact for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the historically underserved groups have participated in NRCS programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs,

including AMA, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. AMA applies to all persons equally regardless of race, color, national origin, gender, sex, or disability status. Therefore, the AMA rule portends no adverse civil rights implications. Copies of the Civil Rights Impact Analysis may be obtained from Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250.

#### *Paperwork Reduction Act*

Section 2904 of the Food, Conservation, and Energy Act of 2008 (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 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 final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this 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 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, as well as the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector, therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### **Discussion of Program**

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 has responsibility for the organic certification cost-share program and the Risk Management Agency 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 made amendments to AMA specifying eligible States and providing additional clarity on the types of assistance to be made available. The original 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. In response to these statutory changes, NRCS published an interim final rule with request for comment on November 20, 2008 (73 FR 70245). NRCS received four letters containing approximately one dozen comments. Respondents included two non-governmental organizations, one individual, and one Tribal agency. Comments were received from Arizona, Nebraska, Pennsylvania, and Wyoming. The discussion that follows is organized in the same sequence as the final rule.

#### **Discussion of Comments**

##### *Section 1465.1 Purposes and Applicability*

Section 1465.1, “Purposes and Applicability,” sets forth AMA’s purpose, scope, and objectives. 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 revised § 1465.1 in the interim final rule to add Hawaii to the list of States eligible for AMA assistance and replaced “15” with the number “16” when referring to the number of eligible States. AMA is now available in Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. One respondent indicated his overall support of the AMA program, stating that AMA provides “the best source of financial support that {the} government has developed to assure continued stewardship of America’s natural resources.” No changes have been made in this section.

##### *Section 1465.2 Administration*

Section 1465.2, “Administration,” describes the role of NRCS and provides a brief overview of the agency’s administrative responsibilities. In the interim final rule NRCS amended § 1465.2 to reflect the 2003 decision made by USDA to have NRCS administer the AMA natural resource conservation provisions and to clarify NRCS’ relationship with the CCC. No further changes have been made in this section.

##### *Section 1465.3 Definitions*

Section 1465.3 sets forth definitions for terms used throughout this

regulation. The interim final rule added or revised several definitions to align AMA terms with terms used by other NRCS conservation programs. Two respondents commented on the definitions provided in § 1465.3.

One respondent requested that the “resource concern” definition reflect the risk management aspect of AMA. NRCS has chosen to retain the interim final rule’s definition of “resource concern” to keep it consistent with other USDA programs. As defined in § 1465.3, the term, “resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed through the implementation of conservation practices by participants.” Instead of addressing “risk management” in the “resource concern” definition, NRCS addressed risk management in the program’s purpose statement, which is located in § 1465.1. As stated, the purpose of AMA’s financial assistance funds are to: “Construct or improve water management 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.”

Another respondent requested clarification on the definition “Historically underserved producers” and asked specifically whether producers in the Navajo Nation will be considered “historically underserved producers.” The term, “historically underserved producer” merges the term “beginning farmer or rancher,” “limited resource farmer or rancher,” and “socially disadvantaged farmer or rancher” to simplify terms within the AMA rule. Farmers and ranchers that meet one or more of these aforementioned terms — beginning, limited resource, or socially disadvantaged — are considered historically underserved for the purposes of AMA. Producers in the Navajo Nation meet the definition of “socially disadvantaged,” since in the past they have been subject to racial or ethnic prejudices because of their identity as a group without regard to their individual qualities.

NRCS is amending the definition of “historically underserved producers” for editorial clarification to make sure it is understood that the definition includes nonindustrial private forest landowners. The definition, as amended, reads as follows: “historically underserved producer means an eligible person, joint operation, or legal entity

who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or nonindustrial private forest landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in § 1465.3.”

One respondent requested that NRCS compensate the respondent for providing programmatic support to NRCS to implement a conservation practice. Specifically, the respondent wanted to be compensated for conducting inventories and cultural resource assessments on Indian lands. Section 2706 of the 2008 Act amended the Food Security Act of 1985 (1985 Act) to authorize payments to third party technical service providers (TSPs) for “related technical assistance services that accelerate program delivery.” Related technical assistance services include, but are not limited to, conservation planning documentation, payment scheduling and documentation, and other services like cultural resources inventory and assessment, which may accelerate conservation program delivery.

The 2008 Act also authorized TSPs to be used to carry out the AMA program. For this reason and to clarify that TSPs may be used to expedite AMA conservation program delivery, NRCS added § 1465.8 to the final rule to incorporate the TSP provisions used by other NRCS conservation programs. As in the case of Title XII conservation programs, an AMA participant or NRCS may use the services of a qualified TSP to install and implement conservation practices. Technical services provided may include conservation planning; cultural resources studies; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and related technical assistance services as described above. In addition to becoming certified TSPs, Indian Tribes may also explore with NRCS the special sole source provisions contained in section 8(a) of the Small Business Administration Act or enter into one or more contribution agreements or cooperative agreements with NRCS to provide professional services.

#### *Section 1465.4 National Priorities*

As part of the interim final rule, NRCS added § 1465.4, “National Priorities,” and re-designated the subsequent sections accordingly. The new § 1465.4 establishes national priorities to guide State funding allocations, AMA contract selection, and implementation priorities for AMA conservation practices. One

respondent requested that paragraph (c) be revised to include State Technical Committees in the establishment of State and local priorities. Section 1261 of the 1985 Act requires the Secretary of Agriculture to establish a technical committee in each State to assist the Secretary in the considerations relating to implementation and technical aspects of the conservation programs authorized under Title XII of the 1985 Act. AMA was authorized by section 524(b) of the Federal Crop Insurance Act, as amended, and therefore, is not a Title XII conservation program. Thus, State Technical Committees are not permitted to provide advice on AMA. However, nothing precludes a State Conservationist from obtaining input from particular Federal, State, Tribal, and local agencies when establishing State and local priorities. NRCS also encourages local input in § 1465.20, where it states: “\* \* \* the State Conservationist will develop ranking criteria and a ranking process to select applications taking into account national, State, Tribal, and local priorities.” No changes have been made in this section.

#### *Section 1465.5 Program Requirements*

Section 1465.5, “Program requirements,” sets forth land and applicant eligibility. NRCS revised § 1465.5(c)(6) of the interim final rule to clarify that AMA participants are subject to Adjust Gross Income (AGI) limitations, as set forth in the 2008 Act’s amendments to section 1001D of the 1985 Act. The AGI and program eligibility requirements require NRCS to 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. One respondent requested that a waiver process be implemented so that a contract can proceed if substantially all members of the legal entity are listed. NRCS is bound by section 1001D(b)(2)(A)(i) of the 1985 Act, as amended, which states that a person or legal entity will not be eligible to receive a conservation program payment, such as an AMA payment, if the average adjusted gross income exceeds \$1,000,000, unless not less than 66.66 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income. The statutory language did not place any exemptions or waiver authority based on the involvement of members within a legal entity. As a result, an applicant is required to list all members of a 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 part 1400.” Paragraph (6) has also been added to clarify policies related to Indian Tribes or Indians represented by the Bureau of Indian Affairs (BIA), and paragraphs (7) through (11) have been renumbered accordingly.

One respondent supported the inclusion of publicly-owned land as eligible land. With this in mind, and in an effort to be consistent with other USDA conservation programs, NRCS amends the AMA regulation and removes the requirement that the benefit of the conservation practice on public land address an identified resource concern that is on private land. NRCS has determined that the AMA statute should not be interpreted so narrowly to preclude the ability of producers to enroll part of their overall agricultural or forestry operation simply because the resource concerns exist on publically owned land. USDA considers these lands to be part of the producer’s operation if it is a working component of the private agricultural operation. Therefore, NRCS is issuing this final rule that modifies the AMA regulation to authorize an AMA contract to include conservation practices that address an identified resource concern on public land where a participant manages such lands as a working component of their agricultural or forestry operation, and the participant has control of the land for the term of the AMA contract.

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

Section 1465.6, “AMA plan of operations,” describes the AMA plan of operations (APO) as the document that contains the information related to practices and activities to be implemented under AMA. Section 1465.6 also specifies the requirements for the APO and that participants are responsible for implementing them. No changes have been made in this section.

#### *Section 1465.7 Conservation Practices*

Section 1465.7, “Conservation practices,” describes how NRCS determines eligible conservation practices. No changes have been made in this section.

#### *Section 1465.8 Technical Services Provided by Qualified Personnel Not Affiliated With USDA*

Section 1465.8, “Technical services provided by qualified personnel not affiliated with USDA,” has been added

to the final rule to address the use of TSPs by NRCS and AMA participants.

### **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. In the interim final rule, NRCS removed the reference to State Technical Committees providing advice on AMA ranking criteria, since State Technical Committees are permitted only to provide advice on conservation programs authorized by Title XII of the 1985 Act. While the respondent accepted NRCS’ rationale for removing State Technical Committees from the criteria development process, the respondent suggested that language be included that requires consultation with the State conservation agencies and local conservation districts. NRCS retains paragraphs (c) and (d) of § 1465.20 which states that the State Conservationist will develop ranking criteria using a locally-led process that takes into account National, State, Tribal, and local priorities. No changes have been made in this section.

#### *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. No changes have been made in this section.

#### *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. To further clarify a participant’s obligations, NRCS added paragraph (e) to this section to specify that if a participant is not operating and maintaining practices during the contract period, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

#### *Section 1465.23 Payments*

Section 1465.23, “Payments,” addresses payments and payment limitations applicable to a participant. NRCS revised paragraph (a) in the interim final rule 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. Two respondents supported NRCS’ policy to pay up to 75 percent of the estimated incurred cost or up to 100 percent of the estimated income foregone and distributing the money to more participants. One respondent requested that NRCS utilize actual costs when determining income foregone and that the approach used in evaluating income foregone should be consistent. NRCS defines income foregone as “the annual net income lost from a change in land use, or land taken out of production, or the opportunity cost of accepting less farm income in exchange for improved resource conditions due to the practice.” An income foregone payment may be based on crop yield losses associated with implementing the practice. For example, this type of payment calculation may apply to a filter strip practice. To establish a filter strip, land is taken out of crop production and planted to an herbaceous cover. The participant will no longer have income from crops on this land or the costs associated with crop production. The costs associated with crop production would be subtracted from the normal crop income received from the area to determine annual estimated income foregone.

#### *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. One respondent specifically supported NRCS’ addition of paragraph (f) in the interim final rule 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. No changes have been made in this section.

#### *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. One respondent has requested that NRCS further clarify or define the type and extent of documentation that may be necessary to demonstrate hardship claims. NRCS has chosen to further define examples of hardship in its policy in part 512 of Title 440 of the Conservation Programs Manual (440 CPM 512). Documentation varies upon the type of hardship incurred. Examples of hardship may include, but not be limited to, natural disasters (e.g., drought, hurricanes, tornadoes, hail, and pest infestations); farm or ranch buildings and equipment destruction; major illness; death; bankruptcy; or public interest (e.g., military service, public utilities easement or condemnation, and environmental and archeological concerns).

### 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. No changes have been made in this section.

#### Section 1465.31 Compliance With Regulatory Measures

Section 1465.31, "Compliance with regulatory measures," specifies that the program participant is responsible for ensuring 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. Specifically, § 1465.32 was amended in the interim final rule 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. One respondent supported this policy, stating that it was important for NRCS to contact the participant prior to exercising the right to access the property to maintain a positive working relationship between the agency and the producer. NRCS concurs with this rationale and has further clarified this policy in the AMA contract to make NRCS and the participant's contract obligations more transparent.

#### Section 1465.33 Equitable Relief

Section 1465.33, "Equitable relief," outlines the policy when a participant relies upon erroneous advice provided by NRCS or when a participant who is in violation of a program provision is determined to have made a good faith effort to comply with the terms of participation. One respondent supported NRCS' policy on equitable relief. No changes have been made in this section.

#### Section 1465.34 Offsets and Assignments

Section 1465.34, "Offsets and assignments," governs offsets and withholdings, as well as assignment of payments. No changes have been made in this section.

#### Section 1465.35 Misrepresentation and Scheme or Device

Section 1465.35, "Misrepresentation and scheme and device," outlines the policies governing producers who have erroneously or fraudulently represented themselves. No changes have been made in this section.

#### Section 1465.36 Environmental Services Credits for Conservation Improvements

Section 1465.36, "Environmental services credits for conservation improvements," provides policies related to AMA participants who are interested in entering into agreements on land subject to an AMA agreement. NRCS made minor changes to this section to clarify the policy.

### List of Subjects in 7 CFR Part 1465

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

■ For the reasons stated in the preamble, the Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, amends 7 CFR Chapter XIV by revising part 1465 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.
- 1465.8 Technical services provided by qualified personnel not affiliated with USDA.

### 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 modifications, extensions, and transfers of land.
- 1465.25 Contract violations and terminations.

### 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 AMA's conservation provisions for the Commodity Credit Corporation (CCC) is assigned to 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 AMA allocation and contract funding decisions; and

(8) Issue payments for completed conservation practices.

(c) No delegation in this part to lower organizational levels will 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, joint operation, or Indian Tribe that has an interest in an agricultural operation, as defined in 7 CFR part 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 an 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, limited resource farmer or rancher, or nonindustrial private forest landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in this section.

*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.

*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 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 United States Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

*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 2 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 2 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 technical assistance 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* is an agency of 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, joint operation, or Indian Tribe that 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, joint operation, or Indian Tribe that 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 participants.

*Secretary* means the Secretary of 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, Caribbean Area, or Pacific Islands 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 levels 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. 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 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 will 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;

(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) With regard to contracts with Indian Tribes or Indians represented by the BIA, payments if a BIA or Tribal official certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of

individuals and payments made by social security or tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The BIA or Tribal entity must also provide, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation practice implementation.

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

(8) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant 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;

(9) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment;

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

(11) 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; or

(3) The land is 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.

#### **§ 1465.8 Technical services provided by qualified personnel not affiliated with USDA.**

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, local agencies, Indian Tribes, or individuals who are certified as TSPs by NRCS.

(c) 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; and information, education, and training for producers, and related technical services as defined in 7 CFR part 652.

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

### **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 will 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 will 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) Encompass all portions of an agricultural operation receiving AMA assistance;

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

(3) Incorporate all provisions 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 addresses the operation and maintenance of the conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan 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.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

(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.

**§ 1465.23 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 (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 will 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 person or legal entity 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 or 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 will 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 will 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 contract participants will be jointly and severally responsible for refunding the payments with applicable interest pursuant to paragraph (d) of this section.

**§ 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 other documents incorporated into the contract, NRCS will 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 (a) of this section, a contract termination will 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 will 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 and is not affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(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 will forfeit all rights for further payments under the contract and will 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' determination that termination is in the public interest.

(iii) In carrying out NRCS' 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 will 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 will 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 will 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 will 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 will 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 participant may be eligible for equitable relief under 7 CFR part 635, section 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If a participant has been found in violation of a provision of the AMA contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635, section 635.4.

#### § 1465.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant will 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 will 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 will 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 will 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 (b) of this section applies, the participant's interest in all contracts will 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.

NRCS 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 operation and maintenance requirements for AMA-funded improvements are met, consistent with § 1465.21 and § 1465.22. Where activities may impact the land under an AMA contract, participants are highly encouraged to request an operation and maintenance compatibility determination prior to entering into any credit agreements. The AMA conservation program contract may be modified in accordance with policies outlined in § 1465.24 provided the modifications meet AMA purposes and are in compliance with this part.

Signed this 1st day of December 2009, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E9-29070 Filed 12-7-09; 8:45 am]

BILLING CODE 3410-16-P

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**19 CFR Part 101**

[CBP Dec. 09-45]

**Technical Amendments to List of CBP Preclearance Offices in Foreign Countries: Addition of Halifax, Canada and Shannon, Ireland**

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document amends title 19 of the Code of Federal Regulations (CFR) to reflect that U.S. Customs and Border Protection (CBP) has added preclearance stations in Halifax, Canada and Shannon, Ireland. CBP officers at preclearance stations conduct inspections and examinations to ensure compliance with U.S. customs, immigration, and agriculture laws, as well as other laws enforced by CBP at the U.S. border. Such inspections and examinations prior to arrival in the United States generally enable passengers to exit the domestic terminal or connect directly to a U.S. domestic flight without undergoing further CBP processing.

**DATES:** *Effective Date:* December 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Conway, Office of Field Operations, Preclearance Operations, (202) 344-1759.

**SUPPLEMENTARY INFORMATION:**

**Background**

CBP preclearance operations have been in existence since 1952. Preclearance facilities are established through the cooperative efforts of CBP, foreign government representatives, and the local airport authorities and are evidenced with signed preclearance agreements. Each facility is staffed with CBP officers responsible for conducting inspections and examinations in connection with preclearing passengers bound for the United States. Generally, passengers who are inspected at a

preclearance facility are permitted to arrive at a U.S. domestic facility and exit the U.S. domestic terminal upon arrival or connect directly to a U.S. domestic flight without further CBP processing. Preclearance facilities primarily serve to facilitate low risk passengers, relieve passenger congestion at Federal inspection facilities in the United States, and enhance security in the air environment through the screening and inspection of passengers prior to their arrival in the United States. In Fiscal Year 2008, over 14.9 million passengers were processed at preclearance locations. This figure represents more than 15 percent of all commercial air passengers cleared by CBP in 2008.

The Agreement on Air Transport Preclearance Between the Government of the United States of America and the Government of Canada was signed on January 18, 2001. Preclearance operations began in Halifax, Canada on October 4, 2006. The Halifax preclearance station is open for use by commercial flights.

The Agreement Between the Government of the United States of America and the Government of Ireland on Air Transport Preclearance was signed on November 17, 2008. Preclearance operations began in Shannon, Ireland on August 5, 2009. The Shannon preclearance station is open for use by commercial flights.

Section 101.5 of the CBP regulations (19 CFR 101.5) sets forth a list of CBP preclearance offices in foreign countries. This document amends this section to add Halifax, Canada and Shannon, Ireland to the list of preclearance offices, and to reflect the nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS' subsequent renaming of the agency as U.S. Customs and Border Protection (CBP) on March 31, 2007 (*see* 72 FR 20131, dated April 23, 2007).

**Inapplicability of Public Notice and Delayed Effective Date Requirements**

This amendment reflects the addition of two new CBP preclearance offices that were established through signed agreements between the United States and the respective host nation. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure are unnecessary. For the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**The Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**Signing Authority**

This document is being issued in accordance with 19 CFR 0.2(a).

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Customs ports of entry, Foreign trade statistics, Imports, Organization and functions (Government agencies), Shipments, Vessels.

**Amendments to Regulations**

■ For the reasons set forth above, Part 101 of the Code of Federal Regulations (19 CFR part 101) is amended as set forth below.

**PART 101—GENERAL PROVISIONS**

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.5 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

\* \* \* \* \*  
Section 101.5 also issued under 19 U.S.C. 1629.

\* \* \* \* \*  
■ 2. Revise § 101.5 to read as follows:

**§ 101.5 CBP preclearance offices in foreign countries.**

Listed below are the preclearance offices in foreign countries where CBP officers are located. A Director, Preclearance, located in the Office of Field Operations at CBP Headquarters, is the responsible CBP officer exercising supervisory control over all preclearance offices.

Country	CBP office
Aruba .....	Orangestad. Freeport.
The Bahamas .....	Nassau.
Bermuda .....	Kindley Field.
Canada .....	Calgary, Alberta. Edmonton, Alberta. Halifax, Nova Scotia. Montreal, Quebec. Ottawa, Ontario. Toronto, Ontario. Vancouver, British Columbia. Winnipeg, Manitoba.
Ireland .....	Shannon.