CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(c) CCC will issue a payment, except the 2005 payment, to a successor party only if such party is otherwise in compliance with all other applicable regulations, which includes for successors to producer contracts only the wetlands and highly erodible land provisions of part 12 of this chapter. In accordance with part 1403 of this title, any claim owed by the successor party to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the successor party.

(d) CCC will report to the Internal Revenue Service any payment made under a successor in interest contract as income earned by the successor party.

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.114 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this subpart in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart C—Miscellaneous Provisions

§ 1463.201 Refunds of importer assessments.

Assessments paid on imported flue-cured or burley tobacco under sections 106A and 106B of the Agricultural Act of 1949 with respect to imports in the 2004 and prior marketing years may be refunded by CCC in accordance with the provisions of 7 CFR 1464.105 that were in effect prior to March 30, 2005, so long as such request for refunds are filed in accordance with such part no later than:

(a) August 1, 2005 for flue-cured tobacco; and

(b) November 1, 2005 for burley tobacco.

[70 FR 17159, Apr. 4, 2005]

PART 1464—REGIONAL CONSERVATION PARTNERSHIP PROGRAM

Subpart A—General Provisions

Subpart B—Partnership Agreements

Subpart C—Program Contracts

Subpart D—General Administration

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

SOURCE: 85 FR 8137, Feb. 13, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 1464.1 Applicability.

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

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

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

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

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

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

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

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

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

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

§ 1464.2 Administration.

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

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

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

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

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

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

§ 1464.3 Definitions.

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

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

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

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

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

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who has not materially and substantially operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has materially and substantially operated a farm, ranch, or NIPF for not more than 10 consecutive years, subject to the following conditions:

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

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

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

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

Covered program means the—

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

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

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

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

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

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

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

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

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

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

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

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

Indian Tribe means any Indian Tribe, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

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

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

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Limited resource farmer or rancher means:

(1) A person who:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Drought;

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

(iii) Water retention and flood prevention;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.4 Funding pool allocations.

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

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

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

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

§ 1464.5 Program requirements.

(a) *General requirements.*

(1) Program participation is voluntary.

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

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

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

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

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

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

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

(3) An Indian Tribe;

(4) A farmer cooperative;

(5) An institution of higher education;

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

(7) A municipal water or wastewater treatment entity;

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

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

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

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

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

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

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

(3) Have effective control of the land;

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information that verifies the producer's status as a historically underserved producer, compliance with part 12 of this title, and compliance with adjusted gross income payment eligibility as established by part 1400 of this chapter; and

(5) For producers operating as a legal entity or joint operation, provide a list of all members of the legal entity or joint operation and embedded entities along with each members' tax identification numbers and percentage interest in the entity. However, where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(d) *Eligible land*. Land may be considered eligible for enrollment in RCPP if NRCS determines that:

(1) The land is private or Tribal agricultural land, nonindustrial private forest land, or associated land on which an eligible activity would help achieve the conservation benefits defined for an approved project; or

(2) The land is publicly owned agricultural land or associated land and the enrollment of such land is—

(i) Appropriate for the type of eligible activity, and

(ii) The eligible activity to be implemented on the public land is necessary and will contribute meaningfully to achieving conservation benefits consistent with an approved project.

(e) *Eligible activities*. (1) In each partnership agreement, NRCS will identify the eligible activities that are available to producers and landowners through the project. Eligible activities may include land management, land rental activities, easements, or watershed type projects. Projects may use more than one type of eligible activity.

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

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

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

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

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

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

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

[85 FR 8137, Feb. 13, 2020, as amended at 85 FR 15051, Mar. 17, 2020]

Subpart B—Partnership Agreements

§ 1464.20 Proposal procedures.

(a) NRCS will:

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

(2) Make public the criteria that will be used to evaluate proposals for partnership agreements in each announced project selection opportunity, which may include whether NRCS will consider alternative funding arrangements or grant agreements during the selection opportunity or whether proposals seeking alternative funding arrangements or grant agreements will have a separate selection opportunity. These criteria will relate to four principle categories: Impact, partner cash and in-kind contribution, innovation, and project management.

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

(1) The scope of the proposed project, including one or more conservation benefits that the project must achieve;

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

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

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

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

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

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.21 Ranking considerations and proposal selection.

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

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

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

(2) Have a high percentage of producers in the area to be covered by the agreement;

(3) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or national efforts;

(4) Build new partnerships with local, State, and private entities to include a diversity of stakeholders in the project;

(5) Deliver a high percentage of applied conservation to achieve conservation benefits and address the priority resource concern for a designated CCA;

(6) Implement the project consistent with existing watershed, habitat, or other area restoration plans;

(7) Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods;

(8) To a significant extent involve—

(i) Historically underserved producers;

(ii) A community-based organization comprising, representing, or exclusively working with historically underserved producers;

(iii) Developing an innovative conservation approach or technology specifically targeting historically underserved producers' unique needs and limitations; or

(iv) An 1890 or 1994 land grant institution (7 U.S.C. 3222 *et seq.*), Hispanic-serving institution (20 U.S.C. 1101a), or other minority-serving institution, such as an historically Black college or university (20 U.S.C. 1061), a tribally controlled college or university (25 U.S.C. 1801), or Asian American and Pacific Islander-serving institution (20 U.S.C. 1059g); or

(9) Meet other factors that are important for achieving the purposes of the program, as determined by NRCS.

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

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

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

(4) Lands outside of a CCA are not eligible for consideration under the CCA funding pool, even where such land may influence resource concerns within the CCA.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.22 Partnership agreements.

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

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

(1) Not to exceed 5 years; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Provide a detailed description of how the lead partner will facilitate participation of historically underserved producers (including through advance payment options, increased payment rates, outreach activities, or other methods for increasing participation by historically underserved producers) if the proposal received increased ranking priority as described in §1464.21(b)(8);

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

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

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

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

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

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

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

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

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

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

(g) *Notification.* All eligible partners who submit a proposal for a partnership agreement or submit a request to renew a partnership agreement will receive notification from NRCS regarding selection or nonselection of the project proposal or approval or denial of the renewal request.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.23 Funding.

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

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

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

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

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

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

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

(3) Providing technical assistance to producers.

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

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

§ 1464.24 Modification, noncompliance, termination, and remedies.

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

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

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

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

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

(2) NRCS may terminate a partnership agreement if—

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

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

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

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

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

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

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

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

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

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

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

§ 1464.25 Alternative funding arrangements or grant agreements.

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

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

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

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

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

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

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

(ii) Support for an environmental market; and

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

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

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

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.26 Supplemental agreements.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The impacts of termination of the supplemental agreement upon the partnership agreement or any associated program contract;

(4) The availability, if any, of administrative review of NRCS determinations under §1464.40; and

(5) Other terms and conditions NRCS determines necessary to ensure the effective delivery of program resources to producers.

§ 1464.27 Third-party contracts or agreements.

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

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

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

Subpart C—Program Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Lands outside of a CCA are not eligible for applications in the CCA, even where conservation efforts on such land may influence resource concerns within the CCA.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.31 Program contract requirements.

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

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

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

(i) Contract duration;

(ii) Maximum Federal payment amounts or rates; and

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

(2) Identify:

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

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

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

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

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

(iii) Other criteria as determined necessary by NRCS;

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

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

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

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

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

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

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

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

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

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

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

(d) *Duplication of payment.* (1) Except as otherwise indicated in this paragraph, any payments received by a participant from a State, private entity, or person for the implementation of one or more eligible activities on eligible land will be in addition to the payments provided to the participant under this part.

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

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

§ 1464.32 Modifications and transfers of land.

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

(1) The parties agree to the modification, and

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

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

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

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

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

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

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

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

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

(e) *Right to terminate.* NRCS may not approve a program contract transfer and may terminate the program contract in its entirety if NRCS determines that the loss of effective control of the land was voluntary, the participant's written notification of loss of effective control was not provided to NRCS within the specified timeframe, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

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

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

§ 1464.33 Violations and remedies.

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

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

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

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

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

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

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

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

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

(f) *Death, incompetency, disappearance.* In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the program contract, terminate the contract, make any payments due under this part pursuant to guidance under applicable provisions of parts 707 and 1400 of this title (including payment to successor(s)), or take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

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

Subpart D—General Administration

§ 1464.40 Appeals.

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

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

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

(2) NRCS provision of technical assistance funds under a partnership agreement or supplemental agreement are not subject to administrative review as the provision of such funds are to assist NRCS with its implementation of the program consistent with 16 U.S.C. 3842 and are not program payments or benefits to a lead partner or nonlead partner.

§ 1464.41 Compliance with regulatory measures.

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

§ 1464.42 Access to agricultural operation or tract.

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

§ 1464.43 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635; however, the financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

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

§ 1464.44 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, legal entity, joint operation, or Indian Tribe will be made without regard to questions of title to the payment under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will apply to contract payments.

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

§ 1464.45 Misrepresentation and scheme or device.

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

(b) A participant will lose all interest in all contracts or agreements with NRCS and will refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter, received by such participant with respect to all contracts and agreements if it is determined that the participant has knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation to NRCS;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

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

§ 1464.46 Environmental credits for conservation improvements.

NRCS recognizes that environmental benefits will be achieved by implementing eligible activities funded through RCPP, and a participant may obtain environmental credits as a result of implementing additional eligible activities through an environmental service market if one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with the purposes of a program contract or supplemental agreement. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for RCPP-funded eligible activities are met. Where the non-RCPP funded additional eligible activities may impact the land under a program contract or supplemental agreement, producers and participants are highly encouraged to request an O&M compatibility determination from NRCS prior to entering into any environmental credit agreements.

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

Subpart A—General Provisions

Subpart B—Contracts

Subpart C—General Administration

AUTHORITY: 7 U.S.C. 1524(b).

SOURCE: 74 FR 64595, Dec. 8, 2009, unless otherwise noted.

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