



## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1464

[Docket ID NRCS-2019-0012]

RIN 0578-AA70

### Regional Conservation Partnership Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with minor changes, an interim rule published in the *Federal Register* on February 13, 2020. The interim rule implemented changes to RCPP that were either necessitated by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) and changes for administrative streamlining improvements and clarifications. CCC amended this interim rule with a technical correction on March 17, 2020. NRCS received input from 65 commenters who provided 335 comments in response to the interim rule. This final rule makes permanent the provisions of the interim rule, responds to comments received, and makes further adjustments in response to some of the comments received.

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

**FOR FURTHER INFORMATION CONTACT:** Kari Cohen; phone: (202) 720-6037; or email: [kari.cohen@usda.gov](mailto:kari.cohen@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The 2018 Farm Bill reauthorized and amended RCPP. On February 13, 2020, an interim rule with request for comments was published in the *Federal Register* (85 FR 8131 - 8145) that added RCPP regulations in 7 CFR part 1464 to implement changes made by the 2018 Farm Bill. A technical correction was published in the *Federal Register* on March 17, 2020 (85 FR 15051 – 15052). This final rule adopts, with minor changes, the interim rule.

### **Discussion of RCPP (7 CFR Part 1464)**

RCPP, implemented under the direction of the Chief of NRCS, promotes coordination of NRCS conservation activities with partners that offer value-added contributions to address on-farm, watershed, and regional natural resource concerns. Through RCPP, NRCS seeks to co-invest with partners to implement projects that demonstrate innovative solutions to conservation challenges and provide measurable improvements and outcomes.

RCPP projects may only be carried out on agricultural or nonindustrial private forest land or associated land on which NRCS determines an eligible activity would help achieve conservation benefits. Eligible conservation activities may be implemented on public lands when those activities will benefit eligible lands as determined by NRCS and are included in the scope of an approved RCPP project.

The interim rule:

- Created a new part in the Code of Federal Regulations (CFR) to acknowledge that RCPP is now a stand-alone program, no longer subordinated to its covered programs.

- Identified three contract types for implementation of RCPP, including programmatic partnership agreements, program contracts, and supplemental agreements.
- Defined terms to address changes made by the 2018 Farm Bill, including—
  - Conservation benefits;
  - Eligible activity;
  - Eligible partner;
  - Lead partner;
  - Nonlead partner;
  - Participant;
  - Priority resource concern;
  - Project resource concern;
  - Proposal; and
  - RCPP plan of operations.
- Identified that NRCS may award up to 15 Alternative Funding Arrangement (AFA) projects, which rely on partner capacity to implement conservation activities.
- Acknowledged the reduction from three funding pools to two and directed partners to apply to either the Critical Conservation Area (CCA) or State and Multistate funding pool.
- Added provisions requiring all RCPP project partners to develop and report on their environmental outcomes.
- Expanded the scope of RCPP by including the authorities of the Conservation Reserve Program (16 U.S.C. 3831–3835) and the Watershed Protection and Flood Prevention Program (Pub. L. 83-566), excluding the

Watershed Rehabilitation Program, in the definition of “covered programs.”

- Expanded the purpose of RCPP to include protection of drinking water and ground water on eligible land.
- Allowed partnership agreements to be longer than 5 years in certain situations, as determined by NRCS, to further purposes of RCPP.
- Allowed partnership agreement renewals for a period not to exceed 5 years that in certain situations may be funded through an expedited noncompetitive process.
- Allowed a partnership agreement, or a renewal partnership agreement, to be extended one time for up to 12 months.
- Required reporting publicly at the time of selection the amount of technical assistance (TA) that will be set aside for project implementation.
- Acknowledged an obligation to provide guidance for partners on how to quantify and report project outcomes, including achievement of conservation benefits.

### **Summary of Comments**

The interim rule 60-day comment period ended May 12, 2020. NRCS received 335 comments from 65 commenters in response to the rule. NRCS reviewed these 335 comments and categorized and summarized them according to the topics identified below. NRCS received comments on a wide variety of topics, including several comments of a general nature, most of which expressed support, as well as a few comments that were not relevant to RCPP or to the RCPP interim rule. The topics that generated the greatest response were easements, funding pools, program administration, program contracts, and proposals.

In this rule, the comments have been organized alphabetically by topic. The topics include:

- Adjusted gross income (AGI) waivers;
- Alternative funding arrangements (AFA);
- Availability of program funding (APF);
- Easements;
- Eligibility;
- Funding pools;
- Partner contributions;
- Program administration;
- Program contracts;
- Programmatic partnership agreements;
- Proposals;
- RCPP activity types;
- Renewals; and
- Supplemental agreements.

### **Adjusted Gross Income Waivers**

*Comment:* NRCS received comment expressing concern about reporting requirements necessary to receive an AGI eligibility determination from the Farm Service Agency (FSA). Comment also expressed concern that the AGI waiver process may harm the ability of small farms to receive conservation assistance and suggested adding more detail on the process and criteria for granting AGI waivers.

*Response:* AGI eligibility determination processes are not within the purview of NRCS or this rulemaking. However, NRCS recently published a National Bulletin (NB 440-20-26) which indicated that an RCPP lead partner may request a waiver of the applicability of AGI at the RCPP project level during the initial Partnership Project

Agreement (PPA) negotiation only. If granted, producers participating in RCPP through individual contracts or agreements will not be required to file AGI paperwork or have AGI determinations made by FSA. If the RCPP lead partner does not request or receive a project-level waiver of the applicability of AGI, a producer may seek a waiver of the AGI limitation upon receiving an AGI determination. No changes are made in the final rule in response to this issue.

### **Alternative Funding Arrangements**

*Comment:* NRCS received comment requesting clarification that NRCS retains administrative responsibility for conservation compliance, AGI, and payment limitation determinations, tenant rights, producer appeals, civil rights, and other similar responsibilities.

Additionally, comment requested that NRCS:

- Remove the parenthetical about roads, dams, and irrigation facilities used to describe the types of infrastructure upon which an AFA could focus;
- Provide guidance on AFA goals;
- Only use AFAs in limited circumstances and apply stringent criteria;
- Support AFA irrigation projects and provide incentives for projects that would benefit fish and other aquatic species, particularly in overallocated basins;
- Administer AFA projects through grant agreements; and
- Expand the indirect costs eligible for reimbursement under AFA projects.

*Response:* NRCS will define responsibilities in the APF announcements and AFA partnership agreements, while still maintaining flexibility. NRCS will identify which responsibilities must remain with NRCS.

This final rule removes the parenthetical from § 1464.25. RCPP infrastructure projects relate to conservation activities that significantly address resource concerns but

require greater investment than a single producer can make. NRCS's goal for AFA projects is to fund proposals that are consistent with RCPP purposes but are more effectively and efficiently carried out through lead partner efforts than through NRCS's conservation delivery system. AFA criteria are published as part of funding announcements when AFA funding is made available. AFAs are "programmatic instruments" that provide NRCS with the ability to balance the flexibility of grants or other agreement mechanisms with statutorily mandated responsibilities regarding NRCS roles. For all RCPP projects, including AFAs, the statutory limitation on administrative costs prohibits use of RCPP funding for a partner's indirect costs. Other than removing the parenthetical noted above, there are no other changes made in the final rule in response to this issue.

#### **Availability of Program Funding (APF)**

*Comment:* NRCS received comment expressing support for the existing APF and requesting that NRCS:

- Clarify its intent to cover project management costs;
- Provide written feedback for projects that are not selected; and
- Follow procedures of lead public entities when possible to promote efficiency.

Comment also included request for additional funding and flexibility for TA, including TA-only projects or projects focused on conservation planning.

*Response:* RCPP projects are collaborative, and NRCS works with each partner to develop procedural flexibility to help deliver conservation assistance effectively in the project area. While partners provide significant contribution to project costs, NRCS focuses on the technical and financial resources necessary to implement conservation activities and covers much of the project costs. For projects that are not selected, NRCS provides feedback to partners to help them develop more competitive proposals for future

submission. NRCS strongly supports conservation planning and technical assistance delivery in its program implementation efforts, including RCPP, and selects proposals that most effectively deliver conservation outcomes. No changes are made in the final rule in response to these issues. With respect to TA-only type projects, the Farm Bill makes clear that all RCPP projects are intended to generate conservation benefits and report on conservation outcomes, therefore, RCPP should prioritize on-the-ground conservation activities plus the TA required to get that conservation on the ground. NRCS has an extensive Conservation Technical Assistance program that provides such support to its partners.

## **Easements**

### *Buy-Protect-Sell (BPS) Transactions*

*Comment:* NRCS received comment related to BPS easement transactions, including support for the availability of BPS transactions under RCPP and requesting the extension of such flexibility to U.S.-held easements. Comment also:

- a) Recommended that NRCS consider as eligible BPS projects that encompass land purchased on an interim basis by State or county governments to improve land access by Historically Underserved (HU) producers;
- b) Addressed easement deed terms, recommending that NRCS make the minimum deed terms available as soon as possible and provide full flexibility in the use of entity-written deed terms; and
- c) Recommended that the entity match follow ACEP-ALE flexibility, which allows a landowner's donation of easement value to constitute all of the nonfederal match requirements.

*Response:* Based on the ACEP definition, BPS transactions are unique transactions that require the transfer of an easement to an eligible entity and do not include the United States as the ultimate easement holder. ACEP land eligibility is



limited to private and Tribal lands. In contrast, RCPP land eligibility includes certain public lands, and NRCS may allow States and local government agencies to enter into a BPS transaction under RCPP. NRCS will announce any authorizations for such transactions through an APF.

NRCS has posted the minimum deed terms to provide a full range of options for US-held and entity-held easements. The minimum deed terms provide eligible entities with maximum flexibility to use their own terms while NRCS ensures that RCPP purposes and requirements are met. NRCS will also maintain easement compensation flexibility under the final rule. Future APFs will provide information on the best approach for leveraging Federal funding and partner efforts.

No changes are made in the final rule in response to these issues.

#### *U.S.-Held Easement Compensation*

*Comment:* NRCS received comment about the range of easement types available under RCPP, expressing support for the flexibility and requesting that NRCS avoid competition between RCPP U.S.-held agricultural land easements and other farm protection programs. Comment also addressed the easement valuation structure identified in the APF, opposing the use of tiered easement compensation based upon level of U.S.-held RCPP easement protection. Comment also recommended that NRCS consider landowner charitable donation of easement value and landowner management activities on an easement as part of the partner's contribution.

*Response:* The three tiers of compensation paid to landowners enrolling in a U.S.-held RCPP easement were established to emphasize the partnership nature of RCPP and to ensure that RCPP would not compete with other NRCS easement programs. While partner contributions are encouraged to compensate landowners fully for enrollment of less restrictive easement types, landowner donations of easement value or associated management costs cannot be counted as partner contribution. Doing so would

reduce the incentive for partners to provide assistance to producers. For example, when RCPP reimburses a producer for up to 75 percent of the cost of implementing a conservation practice, the remaining 25 percent is the producer's responsibility. If the producer solely pays for the 25 percent share, it is not considered a partner contribution. A partner contribution only occurs if the partner assists the producer with the cost of the practice. NRCS will continue to encourage greater partner investment in project success through the competitive tiering of easement compensation. No changes are made in the final rule in response to these issues.

### **Eligibility**

*Comment:* NRCS received comment about land eligibility in general, including support for the eligibility of certain public agricultural lands and some suggesting expansion of such eligibility to all public land. Comment also supported the eligibility of lands owned by non-governmental organizations, while other comment recommended that eligibility be expanded to include forest land under threat from grazing by ungulates<sup>1</sup>. Commenters also expressed appreciation for the consistency of land eligibility between the CSP and RCPP interim rules and urged NRCS to be flexible in determining whether such land is under the “effective control” of the producer.

*Response:* NRCS appreciates comments regarding land eligibility with respect to lands owned by public and non-governmental entities. The RCPP activity type informs whether or not public land or land owned by a non-governmental entity is eligible given existing public trust protections and related restrictions and the relationship of those protections and restrictions to addressing resource concerns. As a result, NRCS believes that the current parameters best reflect the scope of land eligibility. No changes are made in the final rule in response to these issues.

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<sup>1</sup> Ungulates are hooved mammals.

## **Funding Pools**

### *Critical Conservation Areas*

*Comment:* NRCS received comments related to Critical Conservation Areas (CCAs), including recommending that NRCS:

- a) Add excess water as a concern for the Mississippi River basin;
- b) Consolidate the Columbia River basin and the California Bay Delta into a single CCA;
- c) Add water source protection to all eight CCAs;
- d) Add soil health or soil quality as a priority resource concern for all eight CCAs;
- e) Allow CCA projects to include areas outside of a CCA;
- f) Continue Conservation Assessment and Ranking Tool (CART) use;
- g) Expand CCAs to include New England;
- h) Identify a new CCA focusing on coral reefs in the Pacific Islands Areas and the Caribbean Area;
- i) Identify a new CCA focusing on the Puget Sound;
- j) Continue the CCA in the Chesapeake Bay Watershed;
- k) Update CCAs to cover all 50 states; and
- l) Clarify that if a proposal is within a CCA it will only receive priority if it both achieves conservation benefits and addresses the CCA's primary resource concern.

*Response:* While lands outside a CCA can influence resource concerns within a critical conservation area, NRCS identified CCA boundaries to provide clear demarcation. This final rule clarifies that lands outside of a CCA are not eligible for proposals or applications in a CCA. The regulation is also amended to reflect that NRCS

will give priority to proposals in CCAs that both 1) achieve conservation benefits and 2) address at least one of a CCA's priority resource concerns.

NRCS appreciates the comments related to CART and suggestions regarding RCPP and water resource, soil health, and soil quality. Regarding proposed changes to the eight designated CCAs, the Secretary identifies CCAs, including whether an existing CCA will be re-designated. NRCS is working with the Office of the Secretary to determine whether the current designation status of CCAs, including the re-designation of current CCAs or new CCAs, should be undertaken. No changes are made in the final rule in response to these issues.

#### *Other*

*Comment:* NRCS received comment related to funding pools that did not address CCAs. Comment expressed concern that the National funding pool was eliminated and suggested that State Conservationists should be the selecting official for the State and Multi-State funding pool.

*Response:* The 2018 Farm Bill mandated removal of the National funding pool. NRCS provides State Conservationists with advisory allocations to guide the State's ranking process. However, the Chief makes all final selections. No changes are made in the final rule in response to these issues.

#### **Renewals**

*Comment:* NRCS received support for the renewal process though some comment critiqued its competitive nature due to limited funds. Comment recommended that a renewal demonstrate the continued need for the project and requested that NRCS post renewal criteria prior to requesting renewal applications. Comment alternatively recommended funding all renewal requests that qualify, even if it must be done at a reduced rate.

*Response:* Renewals of partnership agreements do not compete with new proposals, but criteria are needed so that NRCS only renews those partnership agreements that represent the best investment of additional RCPP resources. To do so, NRCS uses screening questions to determine if a project has met or exceeded the original objectives, alongside other factors—including available funding and project diversity (geographic and type)—to determine which projects will be offered renewal.

### **Partner Contributions**

*Comment:* NRCS received comment recommending:

- a) Increased practice payments to encourage producer participation in RCPP projects;
- b) Clarification that RCPP funding can be stacked with any other source of funding;
- c) Clarification that partners may reduce their contributions if NRCS provides an award amount less than the partner's proposal request;
- d) Landowner donations (for example, related to practice implementation) be allowed as partner contributions if they are based on verifiable expenses; and
- e) A flexible structure for partner contributions that match overall objectives of individual projects.

Comment also supported NRCS setting partner contribution goals (for example, at least 1:1), allowing partner contribution expenditures after award announcement, and the explicit addition of in-kind contributions as allowable partner contributions. Comment also expressed misplaced concerns that RCPP requires the partner contribution match to be made in cash.

*Response:* NRCS proportionally reduces expected partner contributions when the NRCS award is less than the amount requested, unless negotiated differently by the parties. NRCS will not consider landowner expenses to be partner contributions because

the purpose is to stimulate assistance to producers. NRCS will continue to clarify contribution requirements in APFs. No changes are made in the final rule in response to these issues.

## **Program Administration**

### *Evaluation Criteria*

*Comment:* NRCS received comment recommending use of the following criteria when evaluating proposals for their conservation impact or outcomes, including suggestions that metrics should be used for partnership renewals; use of honeybees and other pollinators; use of practices to support native vegetation; and implementation of a drought contingency plan. Comment also recommended that NRCS:

- a) Identify selection criteria for partnership agreements, including whether there is the availability of alternative funding arrangements, in each APF;
- b) Use a simplified evaluation process;
- c) Consult with partners on all aspects of distributing RCPP financial assistance;
- d) Utilize fully AFAs;
- e) Work with local working groups as part of the proposal ranking criteria;
- f) Provide more certainty on reimbursement of real costs of both project implementation and proposal development;
- g) Work with the lead partner to rank and select priority projects;
- h) Involve the lead partner in program contract selection and development;
- i) Provide equal treatment for small, midsize, and large farms;
- j) Provide an option to forego a public and open enrollment process;
- k) Amend the “priority resource concern” definition in § 1464.3 to highlight soil health as critical to water quality, aquifer recharge, carbon sequestration and water retention; and

- l) Use caution applying “innovation” criteria since it is difficult to apply to flood damage reduction projects.

*Response:* RCPP encourages flexible and streamlined delivery of conservation assistance to producers. To maximize its flexibility and set it apart from other NRCS programs, evaluation criteria used to assess proposals are developed at the APF level. Moving forward, NRCS will consider the evaluation criteria proposed by commenters in developing APFs and, in doing so, will involve partners, stakeholders, and local working groups. Of note, NRCS believes that including scientific conclusions about the role of soil health in the definition of priority resource concern is not congruent with the concept that identifying priority resource concerns depends on the needs of the CCA, rather than a broad, national objective. No changes are made in the final rule in response to these issues.

#### *General*

*Comment:* NRCS received comment requesting that NRCS:

- a) Clarify roles and responsibilities of conservation partners and Technical Service Providers (TSPs) from the time of application through the implementation phases;
- b) Simplify the proposal application, ranking, and implementation processes (for example, maintain the adjustment of terms option);
- c) Require in regulation that there be a communication plan between NRCS and the lead partner to facilitate the entire RCPP project;
- d) Specify the reporting requirements for both NRCS and RCPP partners;
- e) Clarify when contract type will be determined in the application process;
- f) Provide detail on the documentation and planning of technical assistance and contributions;
- g) Acknowledge source water protection as a goal, and;

h) Publish a “plan for comment” that outlines how NRCS will track and report expenditures towards source water protection.

*Response:* NRCS appreciates feedback intended to improve processes and delivery. Proposal application questions are specific to each funding announcement and are created as part of the funding announcement development process. To ensure that projects are feasible and meet program goals and objectives, technical experts provide input into question development and are involved throughout the evaluation and ranking process.

Programmatic partnership agreements specify the responsibilities and expectations of both NRCS and the lead partner from project implementation to close. In addition, per § 1464.2, NRCS has designated an RCPP coordinator for each State, whose role is to guide and assist partners through program implementation. Because the existing process provides ample opportunity for communication between NRCS and the lead partner, no change is made to the regulation to require a communication plan.

NRCS tracks and documents technical assistance internally. NRCS will provide partners a semiannual report that contains the status of each pending and obligated contract under each project and an annual report describing how NRCS used that fiscal year's TA.

RCPP funds associated with RCPP producer contracts in a source water protection (SWP) area as modeled by the Environmental Protection Agency are counted towards the 10 percent of funds that statute requires to be utilized for source water protection. This final rule adjusted the rule language to incorporate SWP as a priority.

#### *Historically Underrepresented (HU) Groups*

*Comment:* NRCS received comment recommending that NRCS incorporate into the final rule benchmarks related to participation by HU groups to reflect the importance and increasing engagement of women who participate in RCPP, and to ensure that RCPP



does not inadvertently favor large landowners. Comment also recommended adding language to identify HU groups as a priority in the proposal procedures (§ 1464.20), ranking and proposal selection (§ 1464.21), and partnership agreement (§ 1464.22) sections of the final rule.

*Response:* Consistent with the 2018 Farm Bill, NRCS gives priority consideration to RCPP proposals that provide outreach to, and engagement of, HU groups. (HU groups, as specified in the RCPP authorizing legislation, include beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and veteran farmers and ranchers. NRCS has and will continue to provide program-specific outreach to HU groups at the national, State, and local levels. These efforts are often tailored to the needs of the service area, with targeted efforts for HU producers. Gender is not a covered HU group, which is specified in the authorizing legislation; however, NRCS encourages the participation of all producers who are eligible.

This final rule encourages further HU producer and landowner enrollment, including requiring partnership agreements to denote any authorizations for higher payment rates, advance payment options, or other methods for encouraging HU participation. Changes are made in the final rule in response to these issues.

#### *Outcomes Measuring and Reporting*

*Comment:* NRCS received comment requesting that the rule be updated to require partners to assess the conservation progress of their RCPP projects “in a quantified form to the extent practicable.” Comment further recommended the use of existing metrics for outcomes measurement, and also suggested that NRCS provide partners with geospatial data on new and existing practices to help facilitate outcomes measurement and reporting. Additionally, comment expressed concern that outcomes activities will further burden already strained NRCS staff capacity. Lastly, comment requested dedicated

NRCS funding for monitoring conservation practices implemented as part of RCPP projects.

*Response:* The 2018 Farm Bill requires NRCS to gather quantitative data regarding conservation benefits, as set forth in the requirements of APFs. RCPP lead partners are required, to the extent practicable, to report on the conservation environmental outcomes of their projects. Reporting on economic, financial, and social outcomes is optional but encouraged. NRCS is committed to collaborating with lead partners to ensure that their reporting of outcomes help NRCS evaluate the value of RCPP investments. No changes are made in the final rule in response to these issues.

#### *Payment*

*Comment:* NRCS received comment suggesting a per-producer payment limit of \$450,000 under RCPP, consistent with payment limitations under EQIP. Comment also suggested that NRCS base payment rates on real, local costs using prevailing wages or the regional Consumer Price Index.

*Response:* Payment limitations, such as those set forth in 7 CFR parts 1466 (EQIP) and 1470 (CSP) are established by statute. RCPP does not have a statutory payment limitation. NRCS plans to have activity-level limitations on producer contracts to ensure wider availability of funding. These limitations will be identified in partnership agreements and posted on NRCS State websites. No changes are made in the final rule in response to these issues.

#### *Staff Support*

*Comment:* NRCS received comment supporting increased NRCS staffing to focus on RCPP projects and communicate with partners, including strong support for the 2018 Farm Bill's requirement, as reflected in the interim rule, that each State identify an RCPP Coordinator.

Comment emphasized the need for designated program staff (including increasing staff where program workload was high) and urged that NRCS further support the RCPP State Coordinators by developing job descriptions for the new role and providing adequate time needed to fulfill the responsibilities. Comment also requested that states provide additional local, technical contacts for RCPP projects to ensure program goals are achieved and urged process efficiencies that allow NRCS technical partners, such as conservation districts, to implement projects without incurring NRCS staff time.

Additionally, NRCS received comment expressing concern about NRCS' dependence on partners and TSP, citing insufficient NRCS staffing at the state and local levels. Comment also requested that NRCS delegate authority to State and regional entities to carry out contract deliverables.

*Response:* NRCS has designated State RCPP coordinators. NRCS appreciates comments expressing concern about NRCS staffing capacity and NRCS' ability to meet and customer service needs in States with heavy workloads. No changes are made in the final rule in response to these issues.

#### *Technical and Software Upgrades*

*Comment:* NRCS received comment recommending that NRCS involve partners in implementing tools such as CART, ensure that all technology be in operation prior to accepting applications so that the process does not change midstream, and clarify how applicants will be selected for different program contract types. Comment additionally recommended including a standardized set of application questions and consistent reporting requirements, and that these be communicated to potential partners earlier in the process. Comment also expressed an interest in ensuring CART remain size-neutral.

*Response:* NRCS has and will continue to develop and improve our business tools, such as CART, including evaluating how to remain size-neutral. NRCS does not intend to change application procedures over the course of an application period, though

it will continue to refine the process for future application periods. The process for matching an applicant with an RCPP contract depends on the nature of the specific programmatic agreement. No changes are made in this final rule in response to these issues.

#### *Technical Service Providers*

*Comment:* NRCS received comment about RCPP's use of TSPs, including that NRCS do more to encourage the use of TSPs and allow technical assistance to be provided by entities other than NRCS-certified TSPs.

*Response:* Requirements about delivery of technical services through TSPs is covered in 7 CFR part 652. The TSP regulation identifies the requirements for a producer to be reimbursed for the cost of hiring a TSP to obtain technical services related to an NRCS conservation program, including RCPP, and such a TSP must be certified by NRCS. The TSP regulation also identifies that NRCS may obtain additional assistance in its delivery of technical assistance through a procurement contract or cooperative agreements. Since the solicitation methods used for those contract or agreement types ensure that NRCS obtains assistance from qualified TSPs, the TSP regulations specify that such TSPs do not also need to be certified under 7 CFR part 652. For more information, visit the NRCS TSP website at <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/technical/tsp/>. No changes are made in the final rule in response to these issues.

#### **Program Contracts**

*Comment:* NRCS received comment requesting clarification as to whether RCPP contracts can serve to meet existing compliance and enforcement requirements. Comment also encouraged separate contracts for easements on agricultural land, a focus on co-operators' needs and resources rather than program requirements, and that NRCS provide a visual depiction as to how the new contracting method will be efficient and

independent. Comment also expressed support for skipping an eligible application on a ranking list if the remaining funding is insufficient to fund that application or for other limited circumstances that would warrant not selecting applications strictly according to rank order.

*Response:* Conservation activities funded under RCPP, as with other NRCS voluntary conservation programs, can address resource concerns that meet a producer's compliance requirements, provided that the producer is not under an administrative order or other compulsory enforcement process related to the producer's failure to meet those requirements. NRCS will provide informational materials to partners about the new contracting methods as requested. No changes to the rule were needed to address these issues.

### **Programmatic Partnership Agreements**

*Comment:* Comment praised approval of salary expenses in PPAs and the ability to make selections out of rank order for critical projects. Comment also suggested that more clarification is needed in the rule on expenses incurred prior to PPA completion, how and when funding will become available, how funds for project management can be requested, who measures success in TA and FA activities, and how partnerships can be terminated.

Respondents suggested that NRCS should:

- a) Publicly report on its TA expenditures under PPAs;
- b) Require lead partners to periodically assess conservation benefits;
- c) Increase PPA length beyond 5 years if needed; and
- d) Establish that lead partners will be required to follow all applicable laws, rules, and guidelines expected of NRCS when awarding contracts.

*Response:* The RCPP statute specifies the terms for PPAs and no change is needed to address agreement duration in this rule. The AFAs provide detail as to the

ability to receive payment for pre-PPA expenses. The terms and conditions associated with terminating a PPA are specified in the PPA itself. The regulation addresses the consequences should NRCS determine that PPA termination is necessary. No changes are made in the final rule in response to these issues.

## **Proposals**

*Comment:* NRCS received comment about several aspects of APFs, recommending that the RCPP regulation include similar detail as APFs regarding proposal requirements and the evaluation process beyond the four overarching pillars.

Comment also requested language:

- a) Addressing circumstances under which “associated” non-agricultural lands would be eligible for RCPP;
- b) Defining “eligible activities” more clearly;
- c) Providing information about the percentages of project funding that will be available for FA versus TA; and
- d) Providing clear guidance on what can and cannot count as direct or in-kind partner contribution.

Further, NRCS received comment:

- a) Requesting clarity regarding “innovation” and “flexibility”;
- b) Identifying that limiting the percentage of funding that can be allocated using discretionary prioritization factors would increase transparency;
- c) Requesting that the RCPP Portal be active at the beginning of the application process; and
- d) Recommending language for the regulation to reflect conservation benefits as a proposal requirement.

*Response:* The funding announcement process and timeline, including the application questions and criteria, are published as part of each funding announcement.

This process provides the greatest program flexibility regarding the diversity of partner capabilities, resource concerns, and other program goals. The criteria are made public and provide transparency about how NRCS is focusing its RCPP implementation. The circumstances about eligible activities, associated non-agricultural lands, and TA and FA percentages will be addressed in upcoming APFs.

Similarly, APFs include more information about “innovation,” selection criteria, and weightings as these terms relate to program priorities. Establishing funding percentages or limitations in the regulation would reduce NRCS’s ability to tailor APFs to critical resource concerns. In response to comment, this rule revises § 1464.20(b) to focus proposal priorities on conservation benefits. No other changes are made in the final rule in response to these issues.

### **RCPP Activity Types**

#### *Rental Contract Duration*

*Comment:* NRCS received comment recommending that RCPP rental contracts should be for 10 years, as that is the duration authorized under the Conservation Reserve Program (CRP).

*Response:* NRCS uses RCPP land rental contracts to focus on short-term, targeted rental needs in the context of a larger RCPP project, unlike the longer-term purpose of CRP rental contracts. RCPP rental contracts are focused on actions such as incentivizing adoption of an innovative cropping system or to transition to an organic production system and thus are short term (3 years). No change was made in response to this comment.

#### *Other*

*Comment:* NRCS received comment covering a variety of RCPP activity types. For practice innovation related to land management contracts, comment recommended:

- a) Simplifying the process for adding interim conservation practice standards;

- b) Including practices focused on water recycling, the recycling of liquid waste, and the adoption of advanced nutrient recovery technology;
- c) Allowing a flexible fallow program to be eligible; and
- d) Allowing different practices and approaches to be used in the same RCPP project and not limit practices in RCPP project awards.

For rental contracts, comment recommended:

- a) Clarifying the availability and eligibility of land-rental practices (from CRP), especially for longer contracts and practices;
- b) Concern about not applying the Conservation Reserve Enhancement Program (CREP) authority for riparian buffers;
- c) Having project partners add a farmer mentor component to projects utilizing the short-term land rental option; and
- d) Clarifying whether the use of CRP authorities (16 U.S.C. 3831–3835) includes CREP.

For easement agreements, comment recommended:

- a) Expanding the reach of entity-held easements by allowing other land, including forested land, wetlands, and riparian areas, as it appeared to the commenter that the interim rule decoupled requirements specific to NRCS's Healthy Forests Reserve Program (HFRP); and
- b) Authorizing payments to producers participating in a project that addresses water quantity concerns and that would encourage conversion from irrigated to dryland farming.

Comment expressed support for the interim rule's inclusion of expanding Pub. L. 83-566 activities nationwide within RCPP. Finally, comment recommended that NRCS continue to allow for greater flexibility in RCPP activity types.



*Response:* NRCS will maintain the integrity of its RCPP practices to ensure wise use of Federal funds while supporting innovation. CREP is a component of CRP (administered by FSA), and CREP agreements are partnership agreements with state governments. NRCS believes that CREP-style agreements would be redundant to the RCPP partnership agreement and would not aid in meeting RCPP goals efficiently.

NRCS expanded the availability of both U.S.-held and entity-held easements to the full extent of the RCPP land eligibility criteria, and therefore the types of easements identified by the comment are already available. In addition, the 2018 Farm Bill expanded the availability of Pub. L. 83-566 authority nationwide, and NRCS has entered into PPAs that utilize the Pub. L. 83-566 authority beyond CCAs.

HFRP land eligibility criteria differs from RCPP criteria. RCPP forest land eligibility is limited to non-industrial private forest land, while HFRP eligibility encompasses commercial forest land as well.

No changes are made in the final rule in response to these issues.

### **Supplemental Agreements**

*Comment:* Comment expressed support for the addition of supplemental agreements to the interim rule and recommended clarifying that NRCS consult with the lead partner when entering into a supplemental agreement with a non-lead partner and provide fuller discussion and clarification of the use of supplemental agreements.

*Response:* A supplemental agreement is a flexible vehicle for obligating RCPP funding to an eligible partner or third party to carry out authorized RCPP activities. Supplemental agreements are used generally to award TA funding, to implement watershed or public works projects, or to implement an entity-held easement agreement. As a condition of supplemental agreement(s), NRCS and a partner may negotiate documentation requirements for payment, based on agreement deliverables and activities. Supplemental agreements will require additional reporting beyond that required of the

overall project's lead partner. No changes are made in the final rule in response to this issue.

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

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

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

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

this rule is a major rule for purposes of the Congressional Review Act of 1996, NRCS and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the *Federal Register*. At the same time, NRCS and CCC note that this final rule reflects consideration of the comments that were provided in response to the interim rule.

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

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

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

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

OMB guidance in M-17-21, dated April 5, 2017, specifies that “transfer rules” are not covered by Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule and is not covered by Executive Order 13771.

### **Cost Benefit Analysis**

RCPP is a voluntary collaborative program that provides financial and technical assistance to partner organizations to help agricultural producers plan and implement conservation activities to address natural resource concerns on private or Tribal agricultural, nonindustrial private forest and certain associated lands. RCPP was first authorized by Congress in the 2014 Farm Bill. To date, 375 projects have been selected across the U.S. and Puerto Rico leveraging \$1 billion in NRCS technical and financial assistance with approximately \$1.3 billion in partner contributions.

Under the 2014 Farm Bill, conservation activities were undertaken through partnership agreements (between NRCS and a lead partner) and contracts or agreements with eligible landowners, entities, and individuals under one or more covered programs (EQIP, CSP, ACEP, HFRP, and Public Law 83-566). EQIP, CSP, and ACEP each contributed seven percent of their annual funding toward RCPP partnership projects. In addition, the 2014 Farm Bill provided \$100 million annually in direct RCPP mandatory funding.

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

The 2018 Farm Bill repeals the seven percent reserved resources from the covered programs, provides \$300 million in annual mandatory CCC funding, and establishes

RCPP standalone contracts. Federal transfers under the 2014 Farm Bill totaled slightly more than \$1 billion for FY2014 through 2018, or \$200 million on an annual basis. The \$300 million in mandatory annual funding increases RCPP funding by approximately \$100 million annually, taking into account the past contribution of the “covered programs” for fiscal years 2014 through 2018.

The 2018 Farm Bill also changed the “funding pool” structure by streamlining from three pools to two pools and providing 50 percent of funds to a CCA pool and 50 percent of funds to a state and multi-state pool. It also allows project renewals and creates new programmatic authorities and expectations for the administration of agreements with partners. In addition, application and renewal processes are simplified to encourage participation by both producers and project partners. To ensure that only the most successful of projects qualify for renewal on a non-competitive basis, NRCS has identified in this rule that a partner has met or exceeded the objectives of the original project in order to be considered for renewal.

Estimates of costs, benefits, and transfers of RCPP on an annual basis are reported in Table 1. Given a 3 percent discount rate, the projected annualized real cost to producers of accessing RCPP is \$204,258 and the projected annualized real transfers are \$289 million. Conservation benefits from RCPP are difficult to quantify at a national scale but have been described by studies at an individual project or watershed or local scale as it relates the different types of conservation practices implemented.

**Table 1: RCPP Annual Estimated Costs, Benefits and Transfers<sup>a</sup>**

Category	Annual Estimate
Costs <sup>b</sup>	\$204,258
Benefits	Qualitative
Transfers	\$289,000,000

<sup>a</sup>All estimates are discounted at 3 percent to 2019 \$ except for the participant access cost, which is nominal.

<sup>b</sup> Imputed cost of applicant time to gain access to RCPP.

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

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

### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to the substantive comments NRCS received on the interim rule, NRCS invited public comments on how to make the rule easier to understand. NRCS has incorporated these recommendations for improvement where appropriate. NRCS responses to public comment are described in more detail above.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by

APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because no law requires that a proposed rule be published for this rulemaking initiative.

### **Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). The 2018 Farm Bill requires minor changes to NRCS conservation programs, and there are no changes to the basic structure of the programs. The analysis has determined that there will not be a significant impact to the human environment and as a result, an environmental impact statement (EIS) is not required to be prepared (40 CFR 1501.5 and 1501.6). While OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1502.16(b)), when not interrelated to natural or physical environmental effects. The Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were available for review and comment for 30 days from the date of publication of this interim rule in the *Federal Register*. NRCS considered this input and determined that there was not any new information provided that was relevant to environmental concerns or bore on the proposed action or its impacts that warranted an environmental impact statement or revising the current available RCPP EA and FONSI.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by

proposed federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed federal financial assistance and direct federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted, consistent with 7 U.S.C. 6912(e).

#### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or



actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does not have significant Tribal implications that require Tribal consultations. Moreover, OTR states that NRCS has adhered to the spirit and intent of Executive Order 13175. Tribal consultation for this rule was included in the two 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, D.C., and on June 26–28, 2019, in Sparks, NV. For the May 1, 2019, Tribal consultation, the portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title II session. There were no specific comments from Tribes on the RCPP rule during the Tribal consultation. If a tribe requests additional consultation, NRCS will work with OTR to ensure that meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

Separate from Tribal consultation, communication and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about the regulation changes. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation Advisory Council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests. Additionally, NRCS held discussions subsequent to the interim rule publication with Indian Tribes and Tribal entities to continue discussions

about the 2018 Farm Bill conservation programs implementation, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4), requires federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal Governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no federal mandates, as defined under Title II of UMRA, for State, local, and Tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

### **Federal Assistance Programs**

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies:

10.932—Regional Conservation Partnership Program.

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

NRCS and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

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

Accordingly, the interim rule amending 7 CFR part 1464, which was published at 85 FR 8131 on February 13, 2020, including the technical correction published at 85 FR 15051 on March 17, 2020, is adopted as a final rule with the following changes:

**PART 1464—REGIONAL CONSERVATION PARTNERSHIP PROGRAM**

- 1. The authority citation for part 1464 continues to read as follows:

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

- 2. In § 1464.3, amend the definition of “Priority resource concern” by revising paragraphs (1) and (2) to read as follows:

**§ 1464.3 Definitions.**

\* \* \* \* \*

*Priority resource concern* \* \* \*

(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:

\* \* \* \* \*

- 3. In § 1464.20 revise paragraphs (b)(1) and (2) as follows:

**§ 1464.20 Proposal procedures.**

\* \* \* \* \*

(b) \* \* \*

(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;

\* \* \* \* \*

4. Amend § 1464.21 by:

a. In paragraph (b)(5), removing the word “or” and add the word “and” in its place;

b. In paragraph (b)(7), removing the word “or”;

c. Redesignating paragraph (b)(8) as paragraph (b)(9);

d. Adding new paragraph (b)(8); and

e. Adding paragraph (c)(4).

The additions read as follows.

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

\* \* \* \* \*

(b) \* \* \*

(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

\* \* \* \* \*

(c) \* \* \*

(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.

5. Amend § 1464.22 by:

a. Redesignating paragraphs (d)(11) and (12) as paragraphs (d)(12) and (13);

d. Adding new paragraph (d)(11).

The addition reads as set forth below.

**§ 1464.22 Partnership agreements.**

\* \* \* \* \*

(d) \* \* \*

(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);

\* \* \* \* \*

**§ 1464.25 [Amended]**

6. In § 1466.25 amend paragraph (b)(2) by removing the parenthetical phrase “(such as roads, dams, and irrigation facilities)”.

7. In § 1464.30, add paragraph (d)(4) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(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.

Kevin Norton,  
Acting Chief,  
Natural Resources Conservation Service.

Robert Stephenson,  
Executive Vice President,  
Commodity Credit Corporation.

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