



CHESAPEAKE BAY COMMISSION

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April 16, 2020

Matthew Lohr, Chief
Natural Resources Conservation Service
U.S. Department of Agriculture

Submitted via www.regulations.gov

Re: Regional Conservation Partnership Program Interim Rule
85 FR 8131, 2/13/2020; RIN 0578-AA70

Dear Chief Lohr:

Thank you for the opportunity to comment on the Regional Conservation Partnership Program (RCPP) Interim Rule. As a tri-state legislative commission representing the general assemblies of Pennsylvania, Maryland and Virginia, our members have heard directly from their constituents about both the value and limitations of Federal conservation programs. Rather than create entirely new programs, the 2018 Farm Bill provided opportunities to improve the effectiveness of existing programs that contribute to a legacy of successful voluntary conservation.

Of those opportunities, the legislative changes to RCPP were championed by members of our region's Congressional delegation, our own Commission members, and conservation partners. To build on the success of RCPP to date and maximize the potential of the 2018 changes, we respectfully offer the following comments on the Interim Rule:

- **Re-designate the Chesapeake Bay Watershed as a Critical Conservation Area.**
Agriculture is the keystone of the Chesapeake Bay states' Phase III Watershed Implementation Plans (WIPs). By 2025, states are relying on agriculture to achieve 72% of the remaining nutrient reduction goals. For the necessary rates of implementation to occur, strong partnerships like those supported by RCPP will be needed.

The need for the Chesapeake Bay to keep its CCA designation is even more important as CCAs will now receive 50% of annual RCPP funding.
- **Maintain the existing Resource Concern Priorities for the Chesapeake Bay CCA.**
Given the urgency of the 2025 deadline and maintaining relevancy with local partners, the current Resource Concern Priorities of:
 - Water Quality Degradation; and
 - Inadequate Habitat for Fish and Wildlifeshould be maintained and not expanded. These priorities should also be linked, favoring projects that address both priorities, not just one.
- **Align Chesapeake Bay CCA project goals with local WIP goals and CEAP findings.**
Each state WIP includes local area goals. Projects should directly support efforts to achieve these local priorities, including the use of numeric nutrient and sediment reduction targets in

the development of project goals and reporting. Additionally, the Conservation Effects Assessment Project recommends targeting practices on the most vulnerable acres.

- **Offer Alternative Funding Arrangements (AFAs) as grant agreements.**

The 2018 Farm Bill and the Interim Rule makes clear that grant agreements are an authorized form of “alternative” funding. However, the AFA Notice of Funding Opportunity (NFO) issued on March 17, 2020 states that AFAs will only be implemented as “programmatic supplemental agreements,” not grant agreements.

The stated justification is that NRCS will be “substantially involved” in the project “through the provision of prescribed technical assistance.” However, the notice goes on to say that “NRCS gives substantial preference to lead partners that can provide to producers the technical assistance necessary . . . NRCS intends to provide limited technical assistance for each project.”

For projects where the lead partner is providing all of the technical assistance to farmers, and NRCS is only performing the minimum statutory duties, grant agreements should be used. We believe that this was the Congressional intent of this provision.

- **Provide additional flexibility for FA:TA ratios.**

Section 2705(6) of the 2018 Farm Bill states that the Secretary will announce the amount of technical assistance provided “at the time of project selection” [emphasis added]. This amount will be project-specific. Additionally, Section 2701(2)(D) states that a purpose of RCPP is to “encourage the flexible and streamlined delivery of conservation assistance.” The Interim Rule appears to be consistent with these statutory provisions.

However, the 2019 RCPP Classic Announcement of Program Funding (APF) and the 2020 AFA NFO both provide a prescriptive breakdown of financial and technical assistance. While some flexibility is provided within that breakdown, we believe it does not go as far as the statutory intent.

- **Specify a plan to fulfill statutory reporting requirements.**

In addition to the technical assistance announcement mentioned above, Section 2703(4) of the 2018 Farm Bill also requires the Secretary to “provide to each eligible partner . . . (A) a semiannual report describing the status of each pending and obligated contract under the project of the eligible partner; and (B) an annual report describing how the Secretary used amounts reserved by the Secretary that year for technical assistance.”

These requirements are mentioned in the “Background” section of the Interim Rule, but more detail on how NRCS intends to fulfill these requirements should be included in the rule itself.

- **Clarify the intent to cover project management costs.**

The 2019 RCPP Classic APF and the 2020 AFA NFO both provide for project management to be covered as part of an “Enhancement TA” allocation. We support the coverage of project management and encourage you to explicitly authorize this in the Interim Rule, with clarification on how this complies with statutory limitations on coverage of “administrative costs.”

- **Involve partners and CEAP findings when developing criteria for program contracts.**
Section 1464.30(a)(5) of the Interim Rule states that “NRCS will develop an evaluation and ranking process” for program contracts with producers. The State Technical Committee should be involved in this process. Additionally, as described above, the CEAP report recommended targeting actions to the most vulnerable acres.
- **NRCS technical assistance should be subject to administrative review.**
Under Section 1464.40(b)(2) of the Interim Rule, NRCS provision of technical assistance is not subject to administrative review. However, as a key component of the partnership or supplemental agreement, and the basis for leveraging partner contributions to meet the purposes of RCPP, this should be subject to administrative review.

Thank you for the opportunity to provide comments and your consideration of improvements to this important program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Pesiri Swanson', with a long horizontal flourish extending to the right.

Ann Pesiri Swanson
Executive Director