



ASSOCIATION of
FISH & WILDLIFE
AGENCIES

The voice of fish and wildlife agencies

MAR 17 2009

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Fax:	202.720.5334	Pages:	9 (including this cover)
Phone:		Date:	3/16/09
Re:		CC:	

- Urgent For Review Please Comment Please Reply

Comments:

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March 13, 2009

Technical Service Provider Team
Natural Resources Conservation Service
Technical Service Provider Assistance Comments
PO Box 2890, Room 5234-S
Washington, DC 20013

RE: Docket Number NRCS-IFR08011, Technical Service Provider Assistance Interim Rule

Dear Sir or Madam:

The Association of Fish and Wildlife Agencies (Association) appreciates the opportunity to comment on the interim rule affecting Technical Service Provider Assistance (TSPA) as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The Association represents the collective perspectives of the state fish and wildlife agencies, and promotes sound management and conservation. All fifty states are members.

Thank you for the opportunity to comment on the interim final rule and provide our perspectives. In general we have several concerns about the interim rule and its direction. While the law increases flexibility and the opportunity for Technical Service Providers (TSPs) to assist NRCS and "accelerate the delivery of conservation programs," if implemented as written many portions of the rule would do just the opposite. For instance, the rule does not include any reference to education and outreach to eligible participants as an eligible activity under TSPA yet the law clearly allows it. The rule includes many hard deliverables such as conservation practice design, layout, installation, and check-out, but these activities alone will not accelerate the delivery of technical assistance. Other vital activities such as landowner relations and contacts, site visits, assistance with conservation plan implementation, participant training, education and outreach will accelerate the delivery of technical assistance and must be included in the rule as related technical services. This and other important concerns are articulated in our attached comments for your consideration and inclusion in the final rule.

Again, thank you for your consideration of our recommendations for the implementation of the Technical Service Provider Assistance provision of the 2008 Farm Bill. Please do not hesitate to contact Mrs. Jen Mock Schaeffer at jenmock@fishwildlife.org or at 202-624-7890 with any questions about our comments, or if we can further assist with this provision.

Sincerely,

Matt Hogan
Executive Director

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Technical Service Provider Assistance Interim Rule
Submitted by the Association of Fish and Wildlife Agencies

General Comments:

- **Related Technical Services**
 - The rule identifies “related technical assistance services in this rulemaking to include conservation planning documentation, payment scheduling and documentation, market survey information related to the establishment of easements compensation rates, and similar activities which result in more timely implementation of conservation programs” However, these hard deliverables **do not and will not** “accelerate conservation program delivery” and will not fulfill the intent of Congress. Other important activities, included in the statute, such as **landowner contacts and relations, education, outreach, participant training, and assistance with the planning, design, installation, implementation** will accelerate conservation program delivery and ease workload burdens on NRCS staff. We recommend expanding the list of “related technical assistance services” to fulfill the intent of Congress, assist NRCS staff, and accelerate conservation program delivery.

- **TSP Payment Rates**
 - The rule states: “The rule changes existing policy by establishing that the NRCS State offices will determine fair and reasonable payment rates for TSPA using guidelines established by the National Office and local NRCS cost, market, and procurement data that are available. NRCS will emphasize using market rate data where available to determine TSP payment rates.”
 - The Association supports the use of “common guidelines” to ensure “consistency” in processes for determining payment rates from state-to-state. Guidelines from the National Office must be flexible enough to allow for variation among states for assorted practices and services provided. However, the **guidelines must not tie the hands of State Conservationists and their ability to appropriately set payment rates that are fair and reflect local market conditions.** Guidance from the National Office must facilitate state-by-state, even regionally within a state, flexibility in setting payment rates. State Conservationists must be able to set rates that reflect local market rates and conditions, including how work force structures such as unions may influence local payment rates. Anything other than this would be counterproductive and counter to the rule.
 - The rule also states that “The NRCS National Office will review and approve State payment rates to ensure regional consistency. ” Regional consistency does not ensure or promote fair or reasonable payment rates that reflect the local conditions. For instance, payment rates in the East will vary widely from Florida to West Virginia to Maine. “Ensuring

regional consistency" will not enable State Conservationists to set rates that reflect local market conditions. Going to a National Practice Rate, like for Technical Assistance, will create problems as costs to implement certain practices will vary widely across the country, making it very difficult to ensure regional consistency. **The Association recommends that NRCS in the rule and in policy allow State Conservationists the needed flexibility to set payment rates that best reflect fair, local market conditions and considerations without regard for regional consistency.**

- **Thank you for recognizing that NRCS costs do not incorporate necessary profit margins to make such rates approximate to the rates that TSPs in the private sector actually charge for their services. Recognizing this problem coupled with the flexibility that must be granted to the State Conservationists for setting payment rates that better reflect local conditions should correct this past problem.**
- **Thank you for changing the rate setting methodology and emphasizing local market rates. This is extremely important, especially in the current economic climate. The Association supports this new direction.**
- **Certification Requirements**
 - It is true that "unique state level requirements beyond licensing and state law" has been a hindrance, particularly to state agency participation. **Thank you for clarifying the policy on licensing and state law requirements for state-level certification.**
 - The Association believes that based on this and state statutory authority for management of fish and wildlife, **State fish and wildlife agency personnel that administer state law and have authority to manage these resources should not have to be certified by NRCS to provide technical assistance on fish and wildlife practices.** This is duplicative, a waste of valuable resources and time, and already within the realm of state agency personnel authority.
 - Thank you for recognizing this problem and taking steps to correct it. Furthermore, the Association believes a **certification should remain a requirement for NGOs and other third-party consultants** to ensure a pool of qualified, knowledgeable TSPs are available to landowners and participants.
- **Agreements**
 - **The Association recommends NRCS promote and use 3-year "umbrella" agreements when ever possible and appropriate.** One year agreements are an increased workload for all parties and does not provide the continuity of staff needed by the agencies/organizations and landowners. Rather than renegotiating the contract agreement every year,

the Association strongly recommends NRCS use a 3-year "umbrella agreement" This is a multiyear agreement that can be amended once year to reflect allocated funding, workload, capacity, and natural resource priorities after NRCS has budget. This is more efficient and will provide consistency in staff and expertise, reduce staff turnover, and avoid hours spent yearly re-negotiating the entire agreement.

- o The Association has discovered that **State NRCS offices do not use their TSP funds in the same way.** While the Association supports state-by-state flexibility, it appears that some States eagerly use third-party TSPs as Congress intended while others have had difficulty in filling third-party TSP positions because funds instead go to supporting NRCS staff. While it is very important to maintain expert NRCS staff, using TSP funds this way may not fulfill the intent of Congress. For consistency in the implementation of this rule, **the Association suggests that the Chief of NRCS review this issue and provide guidance to State Conservationists regarding the acceptable use of TSP funds for staff and third-party providers.** Furthermore, we encourage NRCS to **maximize the use of TSP funds for third-party providers as appropriated funds allow to provide the maximum flexibility of TSP funds.** The Association opposes the use of TSP funds that are used to compensate for State USDA budget shortfalls because this does not fulfill Congressional intent.

Specific Comments by Section of the Rule:

652.1 Applicability

- (a) "... directly, through an agreement with a third party provider..." We support the use of the word "agreement" which will allow flexibility to use the most appropriate and beneficial type agreement for a given situation. However, NRCS should clarify in the rule and in subsequent policy which types of agreements must be advertised. Additionally, considering the current economic conditions, **we strongly encourage NRCS policy to allow less than 50% match from partners under cooperative and contribution agreements.** Many States and conservation partners cannot meet the 50% match rate because of budget cuts and diminishing resources and need more fiscal flexibility to help NRCS deliver conservation programs.
- (b) Please clarify why "installation" is included in the list and how a TSP could qualify for "installation."
- (b) **The Associations believes the list of services provided under this section to be too restrictive and limiting, and we believe this list of hard deliverables will not "accelerate the delivery of conservation programs" as Congress intended.** The law states "technical services provided directly to eligible participants, such as conservation planning, education and outreach, and assistance with design and implementation of conservation practices; and related

technical assistance services that accelerate conservation program delivery.” Consequently, we believe the list must be to expanded to reflect changes in the law and to fulfill its potential. The Association recommends rewording (b) to read as follows:

- **(b) Technical service providers may provide technical services to eligible participants in conservation and forestry planning, education, outreach, training, and assistance with the planning, design, installation, implementation, and check-out of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land where there is a direct private land benefit.**

652.2 Definitions

- **Technical service**
 - The rule omits “outreach and education” as parts of technical services, but these items are included in the law and will accelerate conservation program delivery. The Association believes there are other activities that should be included in the definition as well recommends using the following definition of technical service in the final rule:
 - **Technical service means the assistance provided by technical service providers, including conservation and forestry planning; participant education, outreach, and training; conservation practice assistance, design, layout, implementation and installation; and certification that the conservation practice meets NRCS standards and specifications.**
- **Related Technical Services**
 - The rule does not include a definition of related technical services even though the term is used in the rule. The Association recommends including the following definition of related technical services in the final rule to provide clarity and fulfillment of Congressional intent:
 - **Related technical assistance services means all other forms of assistance to NRCS and participants that accelerates the delivery of technical assistance and may include participant contacts and relations; site visits; assistance with practice coordination and the implementation of plans; NRCS staff and participant training on initiatives or practices; and activities or services that facilitate the development, processing, or implementation of a program contract, including recording conservation planning decisions and specifications.**

Section 652.5 Eligible participant acquisition of technical services.

- **(e) “...activity plans suitable for subsequent incorporation into a program contract.” The Association strongly supports this provision and recommends it be incorporated as written into the final rule.**

- **(m)(1)** "...using national, regional, and locally determined price data." The Association strongly supports this provision and recommends it be incorporated as written into the final rule
- **(m)(1)(iii)** "...review and approve State payment to ensure consistency where similar resource conditions and agricultural operations exist." The Association is concerned that such language will drive payment rates to be more uniform and provide less flexibility for a State Conservationist to set payment rates that reflect fair market values and local conditions. Therefore, we suggest the following be incorporated into the final rule:
 - **(m)(1)(iii)** "...will review and approve State payment rates, that may vary based on fair market values and local conditions, to ensure consistency with implementation of the guidelines out of the National Office. Payment rates may vary between or within States and regions due to differences in State laws, structured work force conditions, the cost of doing business, competition, and other variables.
- **(m)(1)(iv)** "...review payment rates annually, or more frequently as needed " The Association strongly supports this provision. Annual review should allow for adjustments to help meet local market rates and conditions.
- **(m)(1)(v)** "NRCS may adjust payment rates, as needed, on a case-by-case basis, ..." The Association supports this flexibility and commends NRCS for the forethought to include this provision in the rule. The Association strongly supports this provision and recommends it be incorporated as written into the final rule.

Section 652.6 Department delivery of technical services

- **(b)** "Related technical assistance services may include..." The Association believes the list of related technical assistance services is narrowly defined and must be expanded to meet Congressional intent and accelerate conservation program delivery. The Association recommends rewording the second sentence in this section as follows for incorporation into the final rule:
 - **Related technical assistance services means all other forms of assistance to NRCS and participants that accelerates the delivery of technical assistance and may include participant contacts and relations; site visits; assistance with practice coordination and the implementation of plans; NRCS staff and participant training on initiatives or practices; and activities or services that facilitate the development, processing, or implementation of a program contract, including recording conservation planning decisions and specifications.**

- (c) “...other agencies or with an non-Federal entity ..” **Thank you** for including the State fish and wildlife agencies in this provision and for acknowledging the value that State agencies bring to the table with respect to expertise on fish and wildlife issues. **The Association strongly supports the use of the term “agreements”** which allows more state-by-state flexibility and the best type of agreement to be applied in a particular situation. This is critical to the success of technical assistance delivery.
- (c) “...Any contract, contribution agreement, cooperative agreement, or other appropriate instrument....” **The Association strongly supports this provision and recommends it be incorporated as written into the final rule.** Additionally in policy, we encourage NRCS to use 3-year umbrella agreements, when appropriate, that can be amended annually to address fluctuations in annual appropriations, workload, staff capacity and natural resource concerns. This provides for consistency and stability over time for NRCS staff and program participants as well as technical service providers.