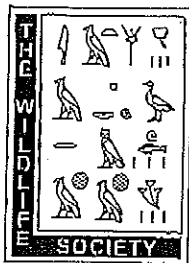


Docket

MAR 17 2009

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THE WILDLIFE SOCIETY

5410 Grosvenor lane, Suite 200 • Bethesda, MD 20814-2144
Tel: (301) 897-9770 • Fax: (301) 530-2471
tw@wildlife.org • www.wildlife.org

FACSIMILE TRANSMISSION

DATE: Tuesday, March 17, 2009

TIME: 1:45 pm

TO: Technical Services Provider Team
NRCS: 202-720-5339

FROM: Laura Bles - Director of
Governmental Affairs with The Wildlife Society
(301)530-2471

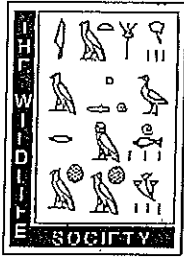
We are transmitting 6 pages (including this cover letter).

If you do not receive all pages, please call back as soon as possible. (301)897-9770.

Thank you.

MESSAGE:

Docket Number NRCS-IFR-08011
5 page document to follow



THE WILDLIFE SOCIETY

5410 Grosvenor Lane • Bethesda, MD 20814-2144
 Tel: (301) 897-9770 • Fax: (301) 530-2471
 E-mail: tws@wildlife.org

17 March 2009

Technical Services Provider Team
 Natural Resources Conservation Service
 Technical Services Provider Assistance Comments
 P.O. 2890
 Room 5234-S
 Washington, DC 20013

The Wildlife Society appreciates the opportunity to provide comments on the interim rule for Technical Service Provider Assistance (Docket Number NRCS-IFR-08011). The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association representing over 8,000 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve wildlife professionals—the scientists, technicians, and practitioners actively working to study, manage, and conserve native and desired non-native wildlife and their habitats worldwide.

In spite of the opportunities the 2008 Farm Bill offers, a serious limiting factor is the number and expertise of people within the Natural Resource Conservation Service (NRCS) to deliver these programs to farmers and ranchers on the ground. Decades of research on how farmers and ranchers adopt new practices has documented that face-to-face communication is vital. This need is met, in part, by third party technical assistance. NRCS' Technical Service Provider Program authorizes individuals to seek certification through a "recommending organization" – a professional organization that has a certification program to train, test, and evaluate individuals for competency in areas of technical service delivery, and whose program meets the certification criteria set forth by NRCS. The Wildlife Society has an agreement with NRCS through which we qualify as a recommending organization, allowing The Society to recommend appropriately trained Certified Wildlife Biologists to NRCS for technical assistance certification.

Section 2706 of the 2008 Act amended section 1242 of the Food Security Act of 1985 to "increase the availability and range of technical expertise available to eligible participants to plan and implement conservation measures." In addition, the Managers Report to the 2008 Act identifies increasing the availability of technical assistance as a priority. TWS supports increases in both the availability and range of technical assistance. To fulfill Congressional intent, NRCS should: (1) clarify how it is expanding the range of technical expertise and what it includes, and (2) determine how many additional technical service providers (TSP) will be needed to provide the necessary wildlife conservation expertise to meet anticipated private landowner demand over the next 5-7 years. We also encourage NRCS to review the TechReg process to ensure that it works for TSP vendors, especially wildlife applicants. Our members who have used it indicate mixed results. TWS would like to see an independent evaluation of TechReg and an analysis of vendor selection and satisfaction by private landowners using the services provided.

It has come to TWS' attention that all state NRCS offices do not use their TSP funds in the same way. While we support 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 permanent NRCS staff. While it is very important to maintain expert NRCS staff, using TSP funds this way may not be consistent with Congress's intent. For consistency in the implementation of this rule, the Chief of NRCS should 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 the use of TSP funds. We oppose the use of TSP funds to compensate for state USDA budget shortfalls because this does not fulfill Congressional intent.

The 2008 Act requires the Secretary to review the certification requirements for third party providers within one year of enactment and make any adjustments considered necessary to improve participation. We request clarification on the process that will be used to evaluate third party providers and how the adjustments will be made.

We recommend NRCS promote and use 3-year "umbrella" agreements whenever possible and appropriate. One-year agreements are an increased workload for all parties and do not provide the continuity of staff needed by the agencies/organizations and landowners. Rather than renegotiating the contract agreement every year, TWS strongly recommends NRCS use a 3-year "umbrella agreement." This is a multiyear agreement that can be amended once a year to reflect allocated funding, workload, capacity, and natural resource priorities after NRCS' budget has been approved. This is more efficient and will provide consistency in staff and expertise, reduce staff turnover, and avoid hours spent re-negotiating the entire agreement.

652.1 Applicability

TWS supports use of the word "agreement" in (a), 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.

We believe the list of services in (b) is too restrictive and limiting, and that 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 expanded to reflect changes in the law and to fulfill its potential, as follows:

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

The definition of technical service omits “outreach and education,” but these items are included in the law and will accelerate conservation program delivery. We believe there are other activities that should be included in the definition as well and recommend 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.

The rule does not include a definition of related technical services even though the term is used in the rule. We recommend 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

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 state conservationists for setting payment rates that better reflect local conditions, should correct this past problem. Also, thank you for changing the rate setting methodology and emphasizing local market rates. This is extremely important, especially in the current economic climate TWS fully supports this new direction.

We support the use of “common guidelines” to ensure “consistency” in processes for determining payment rates from state-to-state. Guidelines from the National NRCS 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 NRCS Office must take into account state-by-state, including

regional differences 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 inconsistent with 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. We recommend 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.

We appreciate the inclusion of "activity plans suitable for subsequent incorporation into a program contract" in (c) and recommend it be incorporated as written into the final rule.

We support the inclusion of "...using national, regional, and locally determined price data" in (m) (1) and recommend it be incorporated as written into the final rule.

Section (m)(1)(iii) states that NRCS will "... review and approve state payment to ensure consistency where similar resource conditions and agricultural operations exist." We are concerned that such language will drive payment rates to be more uniform and provide less flexibility for state conservationists 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, which 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.

We strongly support the provision in (m)(1)(iv) that allows NRCS to "... review payment rates annually, or more frequently as needed." Annual review should allow for adjustments to help meet local market rates and conditions.

We strongly support the provision in (m)(1)(v) that "NRCS may adjust payment rates, as needed, on a case-by-case basis, ..." We appreciate the flexibility and commend NRCS for the forethought to include this provision in the rule.

Section 625.5(m)(2)(v) indicates that NRCS may adjust payment rates in response to unusual conditions or unforeseen circumstances in delivering technical services such as serious threats to human health or the environment or major resource limitations. We would like clarification on

what situations are covered by these provisions. Do sensitive, endangered, or invasive species, for example, qualify?

Section 652.6 Department delivery of technical services

The list of related technical assistance services in (b) is narrowly defined and should be expanded to meet Congressional intent and accelerate conservation program delivery. We recommend rewording the second sentence in this section as follows:

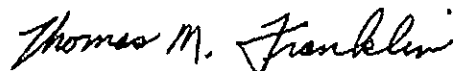
Related technical assistance services means all other forms of assistance to NRCS and participants that accelerates the delivery of technical assistance and may include participant contacts and relations; site visits; assistance with practice coordination and the implementation of plans; NRCS staff and 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.

Thank you for including the state fish and wildlife agencies in (c) and for acknowledging the value that state agencies bring to the table with respect to expertise on fish and wildlife issues. We strongly support 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.

We support (e) and recommend it be incorporated as written into the final rule. Additionally, 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.

Thank you for considering the views of wildlife professionals.

Sincerely,



Thomas M. Franklin
President