



American Farmland Trust  
SAVING THE LAND THAT SUSTAINS US

March 9, 2009

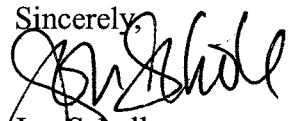
Technical Service Provider Team  
Room 5234-S  
Natural Resources Conservation Service  
U.S. Department of Agriculture  
P.O. Box 2890  
Washington, DC 20013-2890

RE: Technical Service Provider Assistance Comments

Enclosed are comments from the American Farmland Trust concerning the Technical Service Provider Assistance Interim Final Rule (Docket Number NRCS-IFR-08011) as published on January 16, 2009. We request that our comments be considered and adopted as NRCS revises the rule and implements the program.

We appreciate the opportunity to provide these comments and encourage you to contact us should you have any questions.

Sincerely,



Jon Scholl  
President

American Farmland Trust Comments  
On the Interim Final Rule for the  
TECHNICAL SERVICE PROVIDER ASSISTANCE

Docket Number NRCS-IFR-08011

Issue: The minimum term for technical service provider agreement

The rule states that the term for an agreement between the Secretary and a technical service provider (TSP) shall be for a minimum of 1 year and not to exceed 3 years.

AFT's Comment: The interim final rule as published does not reflect the statutory language or the intent of Congress concerning the minimum term for TSP agreements. The statute requires that the minimum term be the period from the date of entering into an agreement and *one year after the date all activities performed under the agreement have been completed*, thus allowing time for completion of the work rather than an arbitrary shorter period. Unfortunately, the rule fails to recognize this statutory time requirement and simply provides a one year minimum term. During the past several years, short term agreements with TSP's have limited the effectiveness of the program, as was documented clearly during Senate hearings early in the farm bill process. To solve the problem, Congress included the legislative language to have longer term, multi-year agreements. AFT recommends that the minimum term in the rule should be changed to read the same as the legislative language as enacted--one year from the completion of the activities under the agreement, not to exceed 3 years. As a practical matter, we believe that this would likely mean that most agreements would be from 2 to 3 years, assuming that the specified work were completed in the first 6 to 12 months or so. We believe that the incentive of payment, if based on reasonable payment rates, is sufficient for most work to be completed promptly.

Issue: Limit on technical service provider contracts

In the rule, Technical Service contracts are available only to "eligible producers" that do *not* receive financial assistance through Title XII programs and the AMA. See 652.2 definition for Technical Service Contract and 652.5 (e) and (f)

AFT Comment: There is nothing in the statute that limits the TSP provisions to eligible producers that do not receive financial assistance. Indeed, the legislative language specifically refers to CCC funding for the technical assistance to cover all programs in Section 1241 (of the 1985 Act as amended by the 2008 Act) which means literally all conservation programs in Title XII. We believe that NRCS must interpret the statutory provision in Section 1242 (g)(2) to be *in addition* to those technical service contracts that are available to program participants that do receive financial assistance under the Title XII conservation programs. AFT recommends that the TSP rule be clarified to insure

that the provisions reflect the addition of service to those producers not receiving financial assistance as well as to insure that the TSP rule provisions apply across the board to all Title XII programs. Furthermore, when technical assistance is covered in any of the Title XII programs rules, such as EQIP (7 CFR Part 1466), the program rule should specifically reference the TSP rule and indicate that the terms and conditions in that rule (7 CFR Part 652) would apply to the specified program. AFT recommends that NRCS clarify in the rule the use of TSP's for both situations where producers receive and where producers do not receive financial assistance.

Issue: Payment rates

The rule states that NRCS will remove reference to "not to exceed" rates and will include a process to insure that rates are developed using market data as well as NRCS cost data.

AFT Comment: Checking the updated Code of Federal Regulations, it appears that reference to "not to exceed" has not been removed from Sec. 652.5. We found five specific references to "not to exceed" rates in Sec. 652.5 (k)(1) and (2). AFT suggests that the agency check the official code and take corrective actions to remove the references. AFT believes that the use of market data is critically important to obtain "fair and reasonable" payment rates as stated in the statute. Having fair and reasonable rates will promote the use of TSP's where necessary to help stretch agency staff to best meet the needs of eligible producers. AFT recommends that NRCS national office guidance to states must stress use of market data where available for payment rates.

Technical item:

There appears to be two definitions of the term "technical service" in 7 CFR Part 652.2 of the official Code of Federal Regulations, with the first of the two being the one that is valid based on the statute. For rules, we do not believe that two different definitions for the same term in Part 652 are tenable.