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Technical Service Provider Team
USDA Natural Resources Conservation Service
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Washington, DC 20013-2890

RE: RIN 0578-AA48 (74 FR No. 11, pg. 2800-2806); Interim Final Rule and Request for Comment, 7 CFR Part 652, Technical Service Provider Assistance

To Whom It May Concern:

These comments are in response to the NRCS's publication of interim final rules and request for comments to address changes to the Technical Service Provider (TSP) regulations at 7 CFR Part 652 pursuant to the Food, Conservation, and Energy Act of 2008. The Washington Department of Natural Resources administers forest fire protection, forest practices regulation, and forest landowner assistance programs across 12 million acres of non-federal forestland in Washington State. DNR staff are highly qualified forestry technical assistance providers for these forest landowners.

Determination of customarily no-cost services

Section 652.5(l) prohibits the department from making payments for services that are customarily provided at no cost, leaving the final determination to the State Conservationist. The 2008 Act makes reference to this qualification at Sec. 2706 of the conference report [new Sec. 1242(f)(4)(B) (EXCLUSIONS) at 16 U.S.C. 3842]. However, a careful reading of this provision finds it qualified by services "provided by a business, or equivalent."

By definition, many of the types of services provided by public agencies are 'no-cost' to the recipient, but are not free of cost to provide. Some states support forest landowner technical assistance from general fund appropriations, others from various sources of federal funding, and still others a combination thereof. In most cases, these services are tied to the administration of a specific state or federal program. Technical service provided by public agencies for the purposes of this rule should therefore not be considered 'customarily provided at no cost.' The language of 652.5(l) could be improved by adding a second sentence: "Technical assistance provided to administer other state or federal programs that is similar in nature to technical assistance under this Part is not considered to be customarily provided at no cost." Alternatively, the phrase "by a business" from the statute could be reinserted in regulation.

Definition of the term "Conservation Plan"

Section 652.5(e) permits the use of technical assistance for developing "conservation plans or activity plans." The term "conservation plan" is undefined in the rule. In order to avoid duplicative planning efforts and thereby maximize the use of technical assistance for practice

application, we recommend adding a definition for this term to Section that is tiered to the planning requirements of each program under the statute. Such a definition could read, "The term 'conservation plan' has the meaning given in statute for various planning requirements of Title XII programs and the conservation activities in the Agricultural Management Assistance Program." Each program requires a plan of some variety, but most use different terms. EQIP, for instance, uses Plan of Operations; the term is defined in statute to include sufficiency for planning under other programs, and the EQIP statutory language also contains a provision on avoiding duplication. Adding an inclusive definition for "conservation plan" would ensure consistency across the various Title XII programs.

Certification of public agency technical service providers

With the exception of any additional training that may be needed for familiarity with NRCS regulations, policies, and other items listed at Sec. 652.21(a)(3), the expertise and training required for natural resource professionals to be employed by state agencies should generally be regarded as sufficient to meet the 652.21(a)(1) and (2) requirements. However, the provisions of 653.24 do not make this clear. This could be addressed by amending 652.24(a)(2) to read, "Seeks certification as an individual as part of the public agency's certification where the public agency: (i) Has endorsed the individual's competency under § 652.21(a)(1) and (2); and (ii) Sufficient information as set forth in § 652.21(a)(3) is contained within the public agency's application."

We also recommend deleting 652.24(b) because it requires NRCS to use the certification process for individuals at 652.22, thereby mooting the opportunity to certify groups of individuals under a public agency application pursuant to 652.24. In other words, the section that provides for a public agency application process (652.24) simply refers back to the individual application process (652.22). Furthermore, the requirements of 652.22(c) are incongruous with the rest of that section and do not comport with the agency certification under 652.24. This is because in 652.22(c), NRCS is only making a determination based on individual certifications submitted under 652.22(a)(1) whereas individuals submitting under an agency are referenced in (a)(3). Deleting 652.24(b) would leave the current 652.24(c), wherein the NRCS determines that the requirements for the public agency and the identified individual(s) are or are not met, as the conclusion of the approval process for public agencies.

Thank you for your time and consideration of these suggestions.

Sincerely,

s// Aaron Everett

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