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Melissa Hammond
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U.S. Department of Agriculture
P.O. Box 2890
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RE: Interim final rule on Technical Service Provider Assistance (7 CFR Part 652), published November 21, 2002, Vol.67 No. 225, Federal Register, pages 70119-70133.

Dear Melissa:

I appreciate the opportunity to comment on the interim rule for technical service provider assistance.

This rule offers a tremendous opportunity to add greater capacity to the excellent efforts that have been carried out by NRCS and its conservation partners to deliver conservation programs to producers.

However, I feel there has been too much focus in the rule on expanding current capacity within the confines of current delivery systems, while opportunities have been overlooked that could do more to:

- leverage existing resources,
- reduce paperwork,
- streamline application procedures,
- employ new delivery system models,
- implement multiple programs for the TA costs that are currently expended for implementing one program, and
- overcome fragmentation between different agencies and levels of government – and, hence, make it easier for producers to participate in conservation activities.

As is stated on page 70127 of the Federal Register, under “Regulatory Certifications” pursuant to Executive Order 12866, “NRCS conducted an economic analysis of the potential impacts associated with this rulemaking ... The analysis estimates that the technical service provider process will have a beneficial impact on the Nation’s natural resources by accelerating adoption of conservation practices, increasing environmental and resource benefits, maintaining and enhancing long-term productivity of the resource base, reducing non-point source pollution damage, and contributing to an increase in net farm income.”

The technical service provider process could have an even more beneficial impact if it was made a little broader and more flexible. My suggestions are described on the following pages for your consideration.

The rule is well thought out. It shows the tremendous work and effort that went into its development. You are to be commended for creating an excellent blueprint for technical service provider assistance.

I've been privileged to see copies of some of the comments that have been sent to you on the interim TSP rule. In many cases, I concur with the principal points raised by the authors of these documents. Two sets of comments that include points I particularly would like to emphasize – from 1) Nadine Scott, President of the California Association of Resource Conservation Districts, and from 2) Loni Kemp, Senior Policy Analyst for the Minnesota Project – are attached with the documentation accompanying this letter.

I also am providing you with two other attachments:

3. Excerpts from GAO Report #02-295, which describes State Advisory Committee views on how USDA Programs could better address environmental concerns. The excerpts contained in the attachment suggest that USDA programs could be improved by:
 - Increased flexibility;
 - Enabling producers to better adapt to the diverse situations faced by landowners across the nation;
 - Emphasizing local conservation needs;
 - Providing eligibility to all types of operations;
 - Not limiting producers to just one or two programs, but instead ...
 - Encouraging a broad array of conservation practices; and
 - Providing additional technical assistance to support producers in *planning* [emphasis added] and implementing conservation practices.

The suggestions I will be making on the following pages would allow the TSP rule to address each of these concerns.

4. A proposed "flow chart" showing how responsibilities might be divided and how services and money might be provided to producers by different agencies, local conservation districts, nonprofit organizations and private TSP companies under the TSP rule (this was prepared by one of our conservation partners, Kyle Thompson of Prairie Land Management, Inc., based in Glenwood, MN).

BACKGROUND

I have just returned from a trip to the Klamath Basin of Oregon and California (where I was born and where my family has farmed for four generations). Klamath Falls is a long way from Florida, where I now spend my time working on agricultural policy issues. But many of the issues that I discussed with producers and agency representatives in the Klamath Basin come up time and time again in Florida, and the other states where our Conservation Delivery Team operates. Producers in the Klamath Basin are embroiled in a major conflict that is squeezing them between Tribal rights, endangered species, environmental interests and water allocations, all of which is complicated by the ability of producers to survive in today's regulatory and economic climate.

The conservation programs in the Farm Bill could be of great benefit to producers in the Klamath Basin – but what is needed is a good way to “assemble” the programs together, with some “adjustments” to ensure they fulfill the needs of Basin producers. The TSP rule could help immensely in this area. I'll explain how on the following pages.

But, first, let me share a few of the comments I heard from producers and agency representatives in the Klamath Basin. And, again, let me stress, they could have been said by producers in almost any state.

Government efforts are fragmented and stakeholder groups are polarized. Most agency people I spoke with feel constrained by the limitations placed on them by agency missions, policies and programs. They all are very dedicated to their jobs and their agencies. But they recognize that they only have the ability (and authority) to deal with one piece of the problem. Here are quotes from seven different people:

- “A lot of producers who have looked at or tried to participate in government programs are very frustrated – they can’t do what needs to be done because the program doesn’t work that way, they can’t get practices approved in a timely way so they can install practices on the ground, and in far too many cases, the amount of money that is paid simply is not worth the hassle.”
- “Tough to get agencies to cooperate together.”
- “Each agency only looks at one portion of the problem.”
- “Agencies have conflicting missions.”
- “So long as people are fragmented in their approaches, we won’t solve problems.”
- “A lot has happened on the ground, but what is its true value? It has been a piecemeal approach and there is a need to do a more strategic watershed approach.”
- “This should be about the people who live here and finding the best ways possible of helping them.”

Actual progress on the ground in the Klamath Basin since the water crisis began in 2001 is in short supply, and of the projects that have been started and/or completed, at least half are of questionable value (or are not being carried out properly) and are creating negative feelings toward “government.”

USDA’s Conservation Reserve Program (CRP) could be of great use in the Klamath Basin. But the rental rates of \$17 to \$25 per acre are based on dryland farming (even though the lands being enrolled are irrigated). This is not enough of an incentive to convert lands out of production and certainly is not worth all the paperwork necessary to enroll. It would be more attractive if the rental rate could be raised to reflect conditions in the Klamath Basin, and if CRP could be coupled with other programs to improve the income per farming unit.

This issue recalls the first three bullet points under Item #3 on the previous page that were excerpted from the GAO report. The TSP program could help resolve these problems.

The \$50 million in Klamath Basin funding is not being used as effectively as it could because it has been structured as a cost-share program. Farmers can contribute labor, but cash is in short supply. Local USDA officials have suggested:

- The cost share should be structured to pay a percentage up front, or to “pay as you go,” say, in four equal payments, so the cooperator doesn’t have to come up with so much out of pocket money (the way it works now, producers pay for everything then bring in their bills and are reimbursed);
- The Klamath Basin money also would be more useful if the funding could be used to “fill in the gaps” between other programs, to make them more efficient and work better on local farms.

There is a need in the Klamath Basin (and in Florida and other states) to have the ability to “assemble” programs from different agencies and different levels of government through a simple, one-stop process. This is necessary to facilitate cooperative, complimentary relationships among all agencies, nonprofit organizations, conservation districts, Tribes and producers. It also can overcome fragmentation that often undercuts efforts to work toward solutions. TSPs are in a unique position to be able to do this, and the rule should recognize – and stress – this.

TSPs could help LEVERAGE resources and programs, so different programs and agencies can work together more efficiently and effectively. This would allow private owners to:

- Develop comprehensive wildlife, conservation and water management plans – all at the same time and all in one document;
- Implement initial on-the-ground practices;
- Put necessary resources in place to qualify for and initiate additional programs; and
- Apply for funding from additional programs to expand, enhance and/or continue practices.

TSPs should NOT be limited to implementing one program at a time. They should be used to:

- Bridge gaps between agencies;
- Assess conservation needs and opportunities on a property
- Use the full array of federal, state, local and private programs to assemble comprehensive conservation plans to:
 - ✓ Reduce operating expenses;
 - ✓ Provide new, ongoing, stable sources of income to help producers survive bad years;
 - ✓ Increase compatibility of ag operations with the environment;
 - ✓ Create plans (and assemble programs) that will work together from one property to the next on a regional and/or watershed basis.

TSP assistance should be used to establish conservation plans on as many properties as possible. This may not result in a producer enrolling in a specific program, but it will provide the producer with more information on his/her property and will recommend practices and management techniques that can maximize operations and use of the property in an environmentally compatible manner. Hence, conservation is advanced, even without the owner enrolling in a program. (But if no program is entered into, how will the TSP get paid? More about this on the following pages.)

Finally, TSPs should be used to facilitate *Rapid Assessments* for on-farm improvements. Engineering for irrigation improvements in the Klamath Basin, for example, is taking too long. Producers don't have 5 years; they need approvals turned around in 3 months, or less.

CONSIDER PROVIDING TSPs WITH UP FRONT FUNDING

A considerable amount of initial groundwork is necessary for a producer to investigate the conservation programs that may be available to him or her, and to prepare applications to participate in these programs.

Rarely do producers have the time – or patience – to consider how different programs might be coordinated, coupled together or blended to leverage the investment of funds and to create efficiencies in the delivery of services that a producer can render to enhance the environmental resources on his or her property.

Assistance in investigating different programs, gathering the base-line information necessary for enrolling in a specific program and drafting conservation management plans necessary to apply for many programs has traditionally come from the staff of government agencies.

But this has caused bottlenecks. There often are many more requests for assistance than a conservation agency's limited staff can honor in a timely manner.

Also, the vast majority of federal and state conservation programs are designed and set in law one at a time, by different agencies, for specific purposes (and sometimes, specific regions of the country), and also must be applied for, administered, monitored, managed and reported on *one at a time*.

The 2002 Farm Bill signed by President Bush in May 2002 includes almost a dozen programs that will provide funding to help producers implement conservation practices.

But there's more. Altogether, the Federal Government has almost *600 different programs* that provide funding for agriculture, conservation, environmental restoration, research, education, training, small business assistance, and rural economic & community development. States have an array of additional programs.

These programs can help producers:

- Improve profitability -- by generating new, ongoing sources of additional revenue,
- Maintain landowner equity,
- Improve compatibility with the environment, and
- Install practices that will reduce operating expenses and help agriculture, ranching and forestry operations become more efficient.

But, first, producers must find out about these programs – and apply for them. Several of the programs contained in the farm bill have proven to be popular with producers and have been oversubscribed in the past. But even with additional funding, producers are unlikely to participate in more than one or two programs at a time.

There's a simple reason for this. If producers are to remain in business, they must first of all keep their minds on business. They cannot (and traditionally have not chosen to) chase after a lot of different programs ... from different agencies and levels of government ... for a dollar here and a dollar there.

Several conservation programs provide funding for technical assistance to allow producers to make use of the expertise that is available from private crop consultants, scientists, and engineers, and to obtain training in conservation management, but these funds become available only *after* the producer has applied for – and been accepted for participation in – a program.

There is a great need for “start-up” funding to help producers:

- investigate the myriad programs available;
- assess the conservation opportunities and needs on their property;
- consider the willingness and capacity of the landowner and/or operator to participate in different programs;
- apply for multiple programs that can be coordinated, coupled or blended together *to leverage existing funding – and the opportunities for enhancing environmental resources*;
- adjust these programs to the local conditions found on the property; and
- “learn the ropes” as they install and implement initial practices.

The TSP rule offers an opportunity to provide producers with this “start-up” funding so they can obtain technical assistance *early on, before normal program funding streams start from other programs*, when the producer is making critical decisions about which programs they can afford to explore and consider enrolling in, or if they can even afford the time to consider enrolling in *any* programs.

There is a great need to “fill the gap” between traditional conservation funding sources and the private landowner, so private landowners will have a greater capacity to utilize the programs available – and to use them in a more effective, cost-efficient and beneficial manner. The Technical Service Provider program could do this, if properly designed.

RECOMMENDATIONS

Here are some suggestions on how this could be done:

1. Require that TSPs contact NRCS before working with any producer;
2. Require that TSPs develop a Memorandum of Understanding (MOU) with NRCS that sets forth the working relationship between the TSP and NRCS, and all the obligations and responsibilities of the TSP;
3. Require that TSPs submit a specific “Scope of Services” for each landowner (and/or operator, as appropriate) that the TSP intends to work with. The Scope of Services should list the initial services to be provided to the producer by the TSP (say, over an initial period of 3 months) and the payment that will be paid to the TSP for these services;
4. This Scope of Services must be reviewed, negotiated with the TSP (if necessary) and approved by NRCS prior to commencement of work by the TSP with the producer. If the TSP begins work prior to approval of the Scope of Services, NRCS will not be obligated to make any payments to the TSP for those services.
5. Require that the TSP submit periodic progress reports and a revised and updated Scope of Services as work progresses with a producer, and as details about the services (and opportunities) to be provided to the producer become more fully developed.
6. NRCS should provide a standardized MOU and sample “Scope of Services” for TSPs to use in developing the documents listed in 1-5, above.

TSPs should be funded to:

1. Hold initial conversations with landowners (and/or operators, when applicable) to determine their interest – and willingness to participate – in different programs;
2. Conduct an assessment of the landowner’s property to determine conservation opportunities and needs.
3. Discuss these findings with the landowner, and go through the various options that are available to the landowner for implementing conservation practices on his/her land.
4. Fill out multiple applications on behalf of the producer that, in turn, will allow the producer to apply for virtually any state and federal conservation program
5. Conduct a baseline analysis of the property to gather data necessary to put initial conservation practices and additional programs in place.
6. Develop an NRCS-approved conservation plan for property.
7. Assist owners/operators to install and implement initial conservation practices, according to this plan.
8. Select programs in which the producer can participate, decide how they can be assembled together and adjusted to accommodate and respond to the unique local conditions on the property, and apply for enrollment in these programs on behalf of the producer.
9. Assist producers in reviewing, negotiating and executing agreements that coordinate, couple and blend multiple programs together.
10. Assist producers in installing and implementing practices to participate in the programs in which the producer has been enrolled.

COMMENTS ON SPECIFIC SECTIONS OF THE INTERIM RULE

SUPPLEMENTARY INFORMATION:

Subpart A – General Provisions

1. See recommendations above. Stewardship America suggests that producers (who often may not be “program participants,” yet) be given a list of certified TSPs by NRCS. Producers may contact any listed TSPs on their own and may choose to talk to several before settling on a specific TSP. Before a TSP begins work with a producer, however, the TSP should be required to have a standing MOU with NRCS that sets forth all the obligations and responsibilities of a TSP. As part of that MOU, the TSP should be required to submit a specific Scope of Services for work with a producer, and have this Scope approved by NRCS before beginning work with the producer.
2. Stewardship America also recommends that payments for all initial services provided to producers prior to enrollment in a Farm Bill program – initial groundwork, research, gathering of baseline data, etc. – be paid for by NRCS upon receipt of an invoice from the TSP for these services, and be based upon the approved Scope of Services.
3. Conservation technical assistance funding should be available to NRCS in a manner that is mandatory and not discretionary under the federal budget and appropriations process. Stewardship America believes the most appropriate source for this funding is the Commodity Credit Corporation (CCC) as directed by Congress in section 2701 of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) (2002 Farm Bill). Furthermore, limits on the use of technical assistance funding from the CCC should be subject only to limits specifically established by the 2002 Farm Bill for certain conservation programs, and not section 11 of the CCC Charter Act.
4. **VERY IMPORTANT: Stewardship America believes that payments for TSPs should come through NRCS, not from the producer. Producers often don’t have the necessary resources to hire consultants and then wait to get reimbursed. Requiring producers to do this will greatly reduce the effectiveness of TSPs in helping with critical *planning* that often must be done before programs are applied for, and in helping producers obtain maximum *leverage* from all the programs and resources available.**

If reimbursements are used, they should be structured to pay a percentage up front, or to “pay as you go,” say, in four equal payments, so the producer doesn't have to come up with so much out of pocket money

Also, reimbursements may be fine if a producer is going to enroll in just one program, and the producer already knows which program he/she is going to enroll in. But many producers – and many agency people – do not know about all the programs that are available from federal agencies, state government and private sources. To ensure a coordinated approach to the myriad programs available, and to assess needs and opportunities on a property and the producer’s willingness to participate in various programs, requires groundwork and research – and takes time. In the end, this time can be repaid many times over because resources and funding can be LEVERAGED to a significant degree. TSPs should be allowed to assist producers early on to help producers explore all possible options for their properties and assist them in choosing – and assembling together – the options that are the best for the property, the best for the producer, and the ones that gives society the biggest bang for the buck.

5. The TSP rule should be seen as an opportunity to EXPAND and EXTEND the capabilities of the current delivery system by allowing TSPs to bring together resources from numerous agencies, levels of government and the private sector and to coordinate programs TOGETHER so that we can move beyond the implementation of one program at a time in an agency-by-agency piecemeal approach.
6. Stewardship America believes that technical service payments should be based on local market rates that have been established for the services that are being provided. The TSPs are literally in a “service” business, and rates for most services being offered already are established by private vendors in local markets. Rates for technical services that have been and are being provided by NRCS should be based on NRCS costs.

I would hope that TSPs will be used to EXPAND and EXTEND the capabilities of the current delivery system. Hence, there may be costs involved for services which NRCS currently does provide and which will be a critical element in ensuring TSPs don't just repeat what's been done in the past, but can expand the scope and extent of conservation program delivery to private landowners. I agree that costs for services that NRCS does provide should not be exceeded. But in looking at these NRCS costs, it will be important to not just look at direct costs for providing services, but to look as well at all *indirect* costs for administration, overhead, etc. which TSPs also will incur.

It also should be remembered that one size does not fit all. Even individual properties in the same area are different – and may require different services and different rates to address conservation needs and opportunities. Again, that's why a Scope of Services can work well in this situation. It has the necessary flexibility to address conservation delivery on a property-by-property basis. Everything about each individual "service" also can be precisely defined:

- the purposes and objectives of each service
- what the TSP will do
- how the TSP will do it
- when the TSP will do it
- what standards or criteria must be met in the performance of each service
- how performance will be measured
- what criteria (or market prices) will be used for calculating payments
- what type of reporting will be required
- what monitoring and spot-checking will take place
- how results will be evaluated
- what steps will be taken if performance does not meet specific criteria

Subpart B – Certification

1. TSPs should be able to be certified in one state and have other states accept that certification, providing the TSP submits all necessary documentation to NRCS to show what training, skills and knowledge it has at its disposal, and providing the TSP is willing to obtain additional training, skills and knowledge as recommended by NRCS in the other states in which the TSP wishes to work in order to address local needs and become certified in those states as well.
2. More explicit national guidelines explaining requisite certification criteria, and measures ensuring that applicants meet those criteria, would eliminate confusion, reduce certification of unqualified applicants, and help fifty states avoid duplicative efforts. Greg Hendricks in the Florida NRCS office in Gainesville has done an excellent job in developing a TSP training and certification program that could serve as a good model for other states – or for developing the national guidelines mentioned here.

3. While the notion of "one stop shopping" with a single TSP that can perform a variety of conservation plans is desirable, NRCS should certify TSPs by practice and expertise. NRCS should develop clear guidelines for categories, while avoiding blanket certification where expertise has not been demonstrated. If a TSP wants to offer "one stop shopping," it must make the investment to hire people with the proper training, knowledge and skills, and to ensure that it has people who have all proper certifications for each and every practice and expertise.

TEXT OF INTERIM RULE – 7 CFR Part 652

Proposed deletions are indicated by ~~strikeouts~~; proposed additions are indicated by underlines. Comments are [in blue text and enclosed in brackets].

§ 652.5 Program participant acquisition of technical services.

(a) ~~Program participants-producers~~ may ... [services may be required before a producer enrolls in a program; also a producer may want technical assistance to develop a conservation plan, without enrolling in a program. This change needs to be made throughout this section.]

(c) [See note above. Because a producer may not yet be a program participant, a change needs to be made in the next sentence, as follows]

(1) Comply with the program agreement (if applicable) when acquiring technical services; ~~and~~

(2) [strike period, and add semi-colon and "and" at end]

(3) Ensure that the technical service provider selected submits a Scope of Services to NRCS for review and approval before any work commences.

(d) [change "program participant" to "producer"]

(1) [strike "; or" at end and add the following] (such reimbursement may be structured to pay a percentage up front, or to "pay as you go," say, in four equal payments, so the producer does not have to come up with so much out of pocket money):

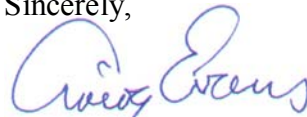
(2) [strike period, and add semi-colon and "or" at end]

(3) NRCS may pay the technical service provider directly, based on the approved Scope of Services for the project, upon submission of an invoice for work that has been completed. [Note: this is an either/or option; a TSP must either be paid by NRCS or the producer; a TSP cannot be paid for the same services by both NRCS and the producer. The Scope of Services can be structured to ensure complete accountability.]

(g) [Strongly support this language!]

(3) NRCS may also pay the technical service provider directly, based on the approved Scope of Services for the project, upon submission of an invoice for work that has been completed.

Sincerely,



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