



509

March 16, 2009

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

### **Comments on Technical Service Provider Rules**

I am writing to provide the comments of the National Wildlife Federation on the Interim Final Rule for Technical Service Provider Assistance.

*National Wildlife Federation* is America's largest member-supported conservation organization. Through our national organization and in partnership with our state affiliates, the National Wildlife Federation (NWF) works to actively educate, inspire, and promote achievable solutions to everyday Americans in communities from coast to coast.

### **Focusing Technical Service Provider Assistance**

Providing technical assistance to landowners and farm and ranch operators is a vitally important role for Natural Resource Conservation Service employees. NRCS employees provide advice in conservation planning that is untainted by any economic interest in the participant's decision, and should be based on the best scientific and economic information available.

In recent years, increased administrative workload has been placed on NRCS field offices, while tight budgets have often resulted in fewer NRCS field staff attempting to meet an increased demand for their services. The net result is that NRCS field staff have had less time available to provide on-farm advice and help farmers and ranchers provide comprehensive conservation planning.

Congress has expanded the opportunity for payments to Technical Service Providers in recent years, including the 2008 Farm Bill, in part to meet this demand for conservation planning. However, we note that there is an important tradeoff for the agency: every dollar spent to pay Technical Service Providers to provide assistance to farmers and ranchers is a dollar that cannot be spent supporting NRCS staff who provide the same kind of assistance to farmers and ranchers.

We believe, therefore, that NRCS needs to be very strategic in how it approaches the use of Technical Service Providers.

• *We recommend that NRCS focus Technical Service Provider contracts and agreements on the following:*

***1. Instances where TSPs can provide services for substantially less money than internal NRCS costs.***

The preamble to the rule indicates that: “neither the 2004 nor the 2008 TSP Cost Benefit Analysis provides a cost comparison of TSPs costs with internal NRCS costs.” The rule also notes that NRCS will determine TSP payment rates “according to local NRCS cost data, procurement data, and market data.” We believe that NRCS should undertake cost comparisons of the internal NRCS costs with those provided by TSPs, and report on those comparisons. As it sets payment rates for TSPs, it should focus on the *lower* of the market data and the local NRCS cost data, to avoid paying more for TSP services than it would cost to provide the service directly through NRCS employees.

This approach would also make continued use of contribution agreements, where other agencies or organizations provide a share of the cost of delivering the technical service to farmers and ranchers, and thus the services can be provided at lower overall cost to NRCS than if NRCS employees provided the service. This approach can be particularly effective with state fish and wildlife agencies, which have substantial expertise in fish and wildlife habitat and are well positioned to provide planning services to landowners. Contribution agreements with these agencies and other organizations would make the most efficient use of federal taxpayer funds.

***2. Instances where NRCS employees do not have the critical skills needed.***

As demand for conservation planning expands, NRCS will find that for some kinds of conservation planning and in some locations, NRCS employees will not have the critical training and skills needed to meet farmer and rancher needs. Examples include (in at least some locations) wildlife habitat planning, fishery restoration, transition to organic crop and livestock production, design of methane digesters, forest management, and whole-farm energy audits.

We appreciate NRCS efforts to educate and train its employees in these specialized areas, but also recognize that to provide technical services to farmers and ranchers that meet their conservation needs, NRCS will, in these kinds of instances, need to use TSP contracts and/or contribution and other agreements. This kind of assistance should not be limited to individual on-farm planning, but could include (for example) education and outreach to farmers and ranchers.

***3. Instances where TSPs can help address critical resource needs.***

Climate change is a vitally important resource concern. In the past, many NRCS-funded practices designed to address soil, water, wildlife, and other concerns have also helped sequester carbon, reduce energy use, and otherwise address climate change. However, NRCS has not focused its efforts in the past on promoting practices that do the most to address climate change. Most NRCS field employees probably do not have the expertise to develop ‘carbon footprint plans’ for farms and ranches that identify measures that would reduce that footprint through the adoption of different production systems and conservation practices. This is an area where TSPs

could provide a valuable service to landowners, and could even help train and educate NRCS employees.

## **Technical Service Providers Versus Cost Share Assistance**

When using TSPs, NRCS generally pays the full cost of the conservation planning service provided by the TSP, on the theory that NRCS employees would otherwise be providing that service to the farmer or rancher for free. In the past, a large proportion of NRCS TSP payments appear to have gone to engineering firms to develop comprehensive nutrient management plans and to design lagoons and other large livestock waste management systems that support concentrated livestock systems. In some cases, the NRCS funding is paying for plans that large livestock facility owners are required to develop under federal, state or local law.

We understand NRCS is also developing 11 new categories of conservation activity planning that would be eligible under EQIP (and perhaps other programs) for cost-share assistance. Those new conservation activities will, we are told, match 11 new TSP certification categories that will allow TSPs to be certified in those planning areas. We presume (and hope) those new categories will include activities like transition to regenerative organic farming (such as no-till organic methods developed by the Rodale Institute), organic livestock production, design of methane digesters, pyrolysis conversion of biomass, and energy conservation and renewable energy.

We note that, under EQIP (and other program) cost-share provisions, NRCS typically only pays for 50% to 75% of the cost of the practice. That could create some inherent unfairness in the system. For example, if a grass-based livestock producer must pay for 25-50% of the cost of developing a whole-farm conservation plan to address water quality and other resource concerns, while a large feedlot operator gets a comprehensive nutrient management plan and related facility engineering at no cost, then that puts the grass-based producer at an economic disadvantage.

As NRCS pursues high-priority resource concerns at the national level (like climate change), and in states, regions, or watersheds, it should recognize the importance of whole-farm and whole-ranch, multi-resource conservation planning. NRCS should consider providing TSP contracts (or 100% cost-share) for this kind of comprehensive conservation planning. It may also want to consider TSP contracts (or 100% cost-share) where needed to address critical resource needs identified in a particular area.

***• We recommend that in promoting and awarding TSP contracts and making cost-share available for conservation planning activities, NRCS should consider the equity of providing different levels of assistance to competing producers, and should use TSP contracts and agreements and cost-share rates to promote whole-operation, multi-resource conservation planning and planning that addresses the highest resource priorities in an area.***

## **Eliminating Conflicts of Interest**

Neither the old rules nor the new rules include provisions regarding potential conflicts of interest in providing conservation planning assistance through a TSP contract, contribution or other agreement, or cost-share agreement. One of the strengths of having a NRCS employee provide

conservation planning and associated recommendations is that, as a government employee, the NRCS person should have no financial stake in the recommendations made and thus be more immune to bias. State fish and wildlife agency employees are also government employees, and thus should be able to provide planning recommendations free of financial interest.

In contrast, many TSPs do have a direct financial interest in selling products or services that could be identified or recommended through a conservation plan. For example, many crop consultants or cooperatives also sell or market seeds and agrichemicals; CNMP engineering firms could have an interest in carrying out construction of such facilities; TSPs providing wildlife habitat planning could sell seeds and installation services; and TSPs providing energy audits could have a financial interest in selling or installing weatherization practices.

In those cases, the recommendations of the TSP could be slanted towards products or practices provided by that TSP. Even where those firms, organizations or individuals are not selected by the producer to provide the service or product, the fact that the TSP is recommending certain kinds of practices or products can tend to increase demand for those products and services, and thus provide an indirect financial benefit by boosting the market for services or products sold by the TSP beyond conservation planning.

In these cases, there is at least the appearance of a conflict of interest, which could cloud the legitimacy of the conservation plans developed by TSPs with funding from NRCS.

- ***We recommend that NRCS incorporate into its rules conflict of interest provisions which prohibit a TSP providing conservation planning assistance from having a financial interest in products or services recommended by the plans. This would provide the highest level of protection from conflicts of interest, protecting taxpayer funds and the participants from such potential conflicts.***
- ***At a minimum, we recommend that NRCS adopt conflict of interest provisions which require that any TSP or non-governmental entity providing NRCS-funded conservation planning (through a direct TSP contract, contribution agreement, cooperative agreement, procurement contract or cost-share agreement) include prominently in its materials used to solicit participants, and in the contract or agreement with the producer to provide the services, written notice of any direct or indirect financial interest that the TSP has in products or services related to the area of the plan, and include in the plan or plans developed a statement that clearly notes any direct or indirect financial interest that the TSP has in any of the products or services recommended or identified in the plan.***

Thank you for the opportunity to provide comments on these important issues.

Yours in Conservation

***Duane Hovorka***

Duane Hovorka, *on behalf of*  
National Wildlife Federation  
11100 Wildlife Center Drive  
Reston, VA 20190