



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

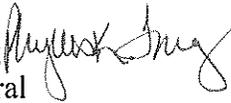
Washington, D.C. 20250



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TO: John Glover
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Natural Resources Conservation Service

FROM: Phyllis K. Fong 
Inspector General

SUBJECT: Wetlands Reserve Program Interim Final Rule

The Office of Inspector General (OIG) has reviewed the Interim Final Rule published in the Federal Register on June 2, 2009, (See 74 Fed. Reg. 26,281) and has several comments. As noted in the preamble to the Interim Final Rule, the National Resources Conservation Service (NRCS) is changing the Wetlands Reserve Program (WRP) to allow the completion of restoration work to land in the event the landowner either fails to complete the restoration activities or if the landowner transfers the property to a person or entity that is ineligible to receive NRCS payments or is unwilling to complete the restoration activities. Prior to this change, the land would have remained unrestored and, therefore, not meet the basic purposes of the WRP. However, we believe that the Interim Final Rule does not adequately address the significant changes to the program, as described in the preamble. Our specific comments are as follows.

§ 1467.3 Definitions.

We recommend that some of the definitions listed in § 1467.3 be modified, based upon the changes proposed in the Interim Final Rule. Specifically, we recommend the definitions for contract, cost-share payment, and restoration cost-share agreement be modified.

“Contract” is currently defined as “the legal document that specifies the obligations and rights of NRCS and any person or legal entity accepted to participate in the program.” In the Interim Final Rule, transfers of assistance for conducting the prescribed program implementation actions have been expanded to include NRCS transfers directly to vendors and cooperating entities. Therefore, we suggest that the definition of “contract” be expanded to include reference to vendors and cooperating entities by adding the following at the end of the current definition: “**or to a vendor or cooperating entity for purpose of conducting the prescribed program implementation actions.**” (emphasis added). Such a revision would ensure that the changes set forth in the Interim Final Rule are fully reflected in the Department’s regulations.

Similarly, the term “cost-share payment” is currently defined as “the payment made by NRCS to a participant to carry out conservation practices and to achieve the protection of wetland

functions and values, including necessary activities, as set forth in the Wetlands Reserve Plan of Operations (WRPO).” However, NRCS has expanded its role to include direct payments to vendors and cooperating entities. Therefore, we suggest that the definition of “cost-share payment” be expanded to state that it is “the payment made by NRCS to a participant **or to a vendor or cooperating entity** to carry out conservation practices” (emphasis added).

“Restoration cost-share agreement” is currently defined as “the legal document that describes the rights and obligations of participants who have been accepted to participate in WRP restoration cost-share enrollment option that is used to implement conservation practices and activities to protect, restore, or enhance wetlands values and functions to achieve the purposes of the program. The restoration cost-share agreement is an agreement between NRCS and the participant to share in the costs of implementing the Wetlands Restoration Plan of Operation.” In the case of a permanent easement, there may be situations in which there is no transfer of assistance from NRCS to the participant landowner for conducting the prescribed program implementation actions. Payments in these situations may be made by NRCS directly to participating vendors and cooperating entities. Therefore, we suggest that the definition of “restoration cost-share agreement” be expanded to include that, “the restoration cost-share agreement is an agreement between NRCS and the participant to **identify the sharing, if any**, in the costs of implementing the Wetland Restoration Plan of Operations.” (emphasis added).

Additionally, we recommend the following additional terms be defined in § 1467.3: vendor, cooperative agreement, cooperating entity, and enrollment document. While these terms likely have common meanings, we believe that there are unique program standards and requirements that may require a definition. We have included suggested definitions below, based upon usage of such terms in the Interim Final Rule.

Vendor means the entity selected by NRCS to carry out conservation practices and to achieve the protection of wetland functions and values, including necessary activities, as set forth in the WRPO. The landowner may be the vendor if the work is performed by the landowner.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.

Cooperating entity means federally recognized Indian Tribes, a State, an unit of local government, or a nongovernmental organization, assisting NRCS with program implementation, including the provision of technical assistance under a cooperative agreement.

Enrollment Document means the document that specifies the terms of enrollment consistent with the terms and conditions of a permanent easement and identifies the scope of the agreement between NRCS and the landowner; the basis for NRCS to obligate funds; and the nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

§ 1467.10 Cost-Share Payments.

Section 1467.10 limits the total amount of payments that a person or legal entity may receive, directly or indirectly, for one or more restoration cost-share agreements to no more than \$50,000. See 7 C.F.R. § 1467.10(a)(3). While this provision was intended to limit payments by NRCS to landowners for the rehabilitation of his/her land, we see no exemption to prevent its extension to vendors and cooperating entities. Based on our reading of the preamble, NRCS is now hiring contractors to do the rehabilitation work previously performed by landowners. If NRCS chooses not to make definition changes, as set forth above, § 1467.10 may need to be modified to address the annual \$50,000 payment limitation for vendors and cooperating entities. These non-landowners may be hired by NRCS to install conservation practices and to achieve the protection of wetland functions and values for multiple non-related WRPOs. This could become an especially difficult situation in areas with a shortage of capable and willing vendors and cooperating entities. Therefore, there may need to be an exception to the \$50,000 payment limitation for these vendors and cooperating entities, as NRCS may otherwise become barred from hiring the most appropriate vendors and cooperating entities due to the \$50,000 cap.

§ 1467.11 Easement and 30-year contract participation requirements.

Section 1467.11(a)(4)(iv) appears to be missing the verb "have" at the beginning of the sentence.

Thank you for the opportunity to comment on the WRP's Interim Final Rule.