

Rules and Regulations

Federal Register

Vol. 68, No. 131

Wednesday, July 9, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rulemaking amends the technical service provider assistance interim final rule published in the **Federal Register** on November 21, 2002, by providing a limited exception to the certification and payment requirements when the Department is partnering with State, local, or tribal governments to carry out its duties to provide technical services.

DATES: Effective date: July 9, 2003. Comments on this amendment must be received by August 8, 2003.

ADDRESSES: Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, or by e-mail to: melissa.hammond@usda.gov, Attention: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov>, by selecting Farm Bill 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013-2890; telephone: (202) 720-6731; fax: (202) 720-3052; submit e-mail to: gary.gross@usda.gov, Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION:

Discussion

This amendment is effective on the date published in the **Federal Register** in order to address the technical service delivery needs this fiscal year. The Department follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of Departmental regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. The Department has determined that, under 5 U.S.C., 553(b)(B) good cause exists for dispensing with the notice and public comment procedures for this rule. Good cause exists because this interim final rule preserves historical means of working with governmental entities necessary to carry out technical services. Not providing for traditional relationships in carrying out technical services will result in delay in carrying out technical services and therefore implementation of the Farm Bill conservation programs.

It is not practical or in the public interest to delay implementation of the technical service provider process established as a result of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). The 2002 Farm Bill authorized several conservation programs and provided substantial funding to implement the programs. In order to accomplish implementation, significant technical services from the private sector and public agencies are needed. Without moving expeditiously to engage public agencies in addressing this workload this fiscal year, the technical assistance funds will not be available for program participants to plan and apply needed conservation practices during the current fiscal year. This exception facilitates this critical implementation.

This limited exception does not reflect a change in the Department's commitment to developing a private sector technical service provider industry. The Department remains committed to developing private sector technical service providers. Also, this exception does not lower the technical standards public agencies must meet in order to be qualified to provide technical services through contribution

agreements. Through this amendment, the Department is reaffirming its commitment to the certification process as set forth in 7 CFR part 652 while at the same time recognizing the long-standing, unique, and productive relationships the Department has had with those agencies in delivering technical services by providing for an exception to the certification process under certain limited circumstances and conditions.

This limited exception does not change the qualifications or technical requirements for providing technical services. The only change is the method used to recognize those qualifications. Public agencies have qualified technical staff to provide technical services. The limited exception in the rule allows for the efficient and effective recognition of those qualifications.

All comments submitted during this rulemaking will be considered during promulgation of a final rule.

Section 1242 of the Food Security Act, as amended by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), require that the Secretary establish a system for approving individuals and entities to provide technical assistance to implement conservation programs under Title XII of the Food Security Act of 1985.

At 7 CFR part 652, the Department set forth a process to approve individuals, private-sector entities, and public agencies as technical service providers through a technical service provider certification process. In this rulemaking, the Department is amending 7 CFR part 652 to provide for a limited exception to the certification and payment requirements when the Department is partnering with State, local, or tribal governments to assist the Department in carrying out its duties to provide technical services. This limited exception is necessary in order to continue the Department's long-standing, unique, and productive relationship with conservation districts and other governmental entities in the provision of technical assistance. This exception is only applicable when the Department is partnering with a State, local, or tribal government in carrying out the Department's duties to provide technical services. When a governmental entity seeks to compete for procurement contracts, or cooperative agreements with the

Department, or seeks to provide technical services directly to a participant as a technical service provider, the certification requirements of 7 CFR part 652 apply.

The Department has limited this exception to governmental entities and declined to expand the exception to non-governmental organizations and others for several reasons. First, the limited purpose of this amendment was to preserve and recognize the Department's long-standing, productive partnership with conservation districts and other governmental entities that have been critical in the Department's delivery of technical assistance. Government entities share the same general mission as the Department as they exist to serve the public. In addition, by carving out a limited exception, the Department also maintains the integrity of the certification process as set forth in 7 CFR part 652, which seeks to treat all parties who wish to provide technical services similarly. Moreover, the Department believes that it would be difficult to justify further expanding this exception in order to include particular groups within the private sector and not others.

During the Dust Bowl days of the 1930s, Congress declared soil and water conservation a national priority, and established the Soil Erosion Service to provide temporary emergency assistance by soil and climate experts. The success of this effort led to the establishment of a permanent agency, the Soil Conservation Service, now the Natural Resources Conservation Service (NRCS). Since the Federal government alone could not solve the problems faced by farmers and ranchers, the challenge was to determine a way to maintain a central national corps of erosion control expertise, while enabling local units of government, individuals, counties, States, and tribes to take the lead in solving the problems of soil erosion.

To encourage landowners to adopt and promote land-conservation initiatives, in 1936, the United States Department of Agriculture (USDA) created a template for State legislatures to consider in establishing conservation districts called the Standard State Soil Conservation District Law. The conservation district was classified as a "special district." It had limited purposes, unlike a unit of general government, such as a county or city. The powers of the district included conducting surveys and research, disseminating information, conducting demonstrations of conservation practices, and carrying out prevention and control measures.

The organization of conservation districts began after State legislatures passed laws based on the 1936 standard. Fifty-two states and territories have adopted conservation district legislation, allowing landowners to create their own districts. Many Native American tribes have also established conservation districts.

Integral to the functioning of the conservation district are three-way mutual agreements between the Secretary of Agriculture, State and territorial governors or their designees, and each conservation district. Through the mutual agreements, USDA works with conservation districts to secure local guidance and gain approval for local delivery of conservation programs on the Nation's private lands. Also, NRCS enters into cooperative working agreements with conservation districts to define cooperation between NRCS and conservation districts in the conservation of natural resources.

Trained NRCS conservationists work with individual farmers and ranchers, through conservation districts, to solve their specific conservation problems.

Districts are governed by a board of directors who are owners or occupiers of land within the conservation district, and are locally elected or appointed. Additionally, each board may appoint several nonvoting associate directors. Board members carry out conservation activities within the district and meet regularly to conduct business.

Conservation district employees hired by the district, such as district managers, clerks, conservationists, and technicians, aid in carrying out conservation activities. All conservation district employees are critical members of the local field office conservation team, and work directly and cooperatively with NRCS.

District employees obtain training and engineering job approval authority from NRCS to carry out conservation planning and conservation practice implementation. They generally work under the direct technical guidance of NRCS. Conservation planning and application carried out by conservation district employees must meet NRCS policy, procedures, standards, and specifications and is subject to ongoing quality assurance. This relationship, or team effort, between NRCS and conservation districts dates back more than 60 years to the formation of districts, and constitutes a unique, long-standing, well-accepted, and successful partnership for addressing the conservation needs within the district.

NRCS desires to continue this relationship with conservation districts and to approve conservation district

employees to provide technical services through cooperative working agreements between NRCS and conservation districts, provided that the conservation district employees meet the requisite criteria for providing technical services. In order for conservation district employees to be approved to provide technical service provider technical services in partnership with the Department, they must meet the requirements and skill levels established in the cooperative working agreements prior to being covered under the terms of the cooperative working agreements.

The cooperative working agreements will clearly describe the terms and conditions for conservation district employees to provide technical services, including items such as meeting NRCS standards and specifications for technical services and compliance with applicable laws and regulations. When the Department is contributing financial resources through a partnership with a conservation district, such a relationship must be memorialized by a contribution agreement which sets forth all the terms and conditions of the relationship, including scope of work, compliance with standards and applicable laws, etc. Conservation districts must contribute at least 50 percent of the resources needed for implementing the contribution agreement.

While NRCS has a unique relationship with conservation districts, NRCS also has existing relationships with many other natural resource related public agencies and tribal agencies interested in providing technical services in partnership with the Department. Many public agencies have unique training and experience related to the delivery of specific conservation technical services that match the needs for technical services needed to plan and implement conservation systems and practices. To maintain those relationships, and to develop new relationships, NRCS may approve other public agency and tribal agency employees to provide technical services through the use of memoranda of understanding (MOU) between NRCS and those natural resource related agencies interested in partnering with the Department to provide technical services, provided that the public agency employees meet the requisite criteria for providing technical services. In order for public agency employees to be approved to provide technical service provider technical services in partnership with the Department, under the terms of the MOU, they must first meet the requirements and skill levels

established in the MOU. As is the case with conservation districts, when the Department contributes financial resources through a partnership with public and tribal agencies, the Department will enter into a contribution agreement memorializing and setting forth the terms of the relationship. Public agencies must contribute at least 50 percent of the technical resources needed for implementing the contribution agreement.

The MOUs and contribution agreements with public and tribal agencies will reflect the terms and conditions for the public agency employees to provide technical services as technical service providers, including items such as meeting USDA standards and specifications, compliance with applicable laws and regulations and other applicable terms. Public and tribal agencies providing technical service provider assistance are liable for the technical services provided by their employees and must warrant the technical services provided.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this interim final rule is a significant regulatory action, and has been reviewed by the Office of Management and Budget (OMB). Pursuant to Section 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002, and included the analysis as part of a Regulatory Impact Analysis document prepared for that interim final rule. The provisions of this interim final rule do not alter the analysis that was originally prepared. A copy of the analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to gary.gross@usda.gov, Attention: Technical Service Provider Assistance—Economic Analysis; or at the following web address: <http://www.nrcs.usda.gov>.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. The U.S. Department of Agriculture (USDA) has not identified any State or local laws that are in conflict with this

regulation, or that would impede full implementation of this rule. In the event that such conflict is identified, the provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Secretary of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, has not been performed. This interim final rule will help implement new and existing USDA conservation programs, which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the promulgation of regulations and the administration of Title II of said Act, which authorizes the use of certified technical service providers, be carried out without regard to Chapter 35 of Title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations, related forms, and other information collection activities needed to establish payment rates under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible, and to NRCS in particular. The forms and other information collection activities required for participation in technical services delivery under the technical service provider assistance rule, amended by this rule, are not fully implemented for the public to conduct business with NRCS electronically. However, the required standard forms discussed in this rule will be available electronically through the USDA eForms Web site, at <http://www.sc.egov.usda.gov>, for downloading.

The regulation will be available at the NRCS homepage at <http://www.nrcs.usda.gov>.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104–354, USDA classified this interim final rule as not major.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis was completed for the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002. The provisions of this interim final rule do not alter analysis that was originally prepared. The review revealed no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to gary.gross@usda.gov, Attention: Technical Service Provider Assistance—Civil Rights Impact Analysis; or at the following web address: <http://www.nrcs.usda.gov>.

List of Subjects in 7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends Title 7 of the Code of Federal Regulations as set forth below:

■ Accordingly, Title 7 of the Code of Federal Regulations part 652 is amended by adding a new section, 652.8, to subpart A.

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

■ 1. The authority citation for part 652 is revised to read as follows:

Authority: 16 U.S.C. 3842, 7 U.S.C. 6962a.

■ 2. Subpart A is amended by adding a new § 652.8 to read as follows:

* * * * *

§ 652.8 Limited Exception to Certification Requirements for State, Local and Tribal Government Partners.

(a) In carrying out its duties to deliver technical services, the Department may enter into agreements, as provided for below, with State, local, and tribal governments (including conservation districts) approving such governmental entities to provide technical services when the Department determines that such a partnership is an effective means to provide technical services.

(b) In the case of conservation districts, the cooperative working agreements between NRCS and the conservation districts will be amended to ensure that district employees have the requisite training or experience in order to provide technical services. For other governmental entities, the Department will enter into memoranda of understanding to ensure that employees of the governmental entity have the requisite training or experience to carry out the technical services. The governmental entity is not required to be certified under the provisions of this regulation in order to provide technical services nor do the other provisions of this regulation apply to any partnership relationship entered into under the authority of this section. The responsibilities of the parties will be governed by the terms of the cooperative working agreement or the memoranda of understanding and the contribution agreement, if any.

(c) Any cooperative working agreement entered into with a conservation district or any memoranda of understanding entered into with a State, local, or tribal government will set forth the specific terms of the Department's approval of such an entity to provide technical services in partnership with the Department, as well as the scope of the relationship. If the Department is providing any financial resources to effectuate such a partnership, the Department will use a contribution agreement to memorialize the relationship, which will include in its terms the requirement that any technical services provided will meet NRCS standards and specifications. Conservation districts and other governmental entities must contribute at

least 50 percent of the resources needed for implementing the contribution agreement.

(d) Governmental entities that are technical service providers shall not be eligible to receive payment under a program contract or agreement for technical services provided to a program participant if the governmental entity has entered into a memorandum of understanding or contribution agreement under this section to provide technical services to that program participant.

Signed in Washington, DC, on June 27, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03-17260 Filed 7-8-03; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03-993-2 IFR]

Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions will ensure that volume control restrictions would not be implemented under these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they would come back into effect automatically at the end of the five-year period.

DATES: Effective August 1, 2003, through July 31, 2008. Comments received by September 8, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail:

moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the