

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but is not limited to: Conservation planning; conservation practice survey, layout, design, installation, and certification; and information; education; and training for producers.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.

#### **§ 636.19 Access to operating unit.**

As a condition of program participation, any authorized NRCS representative shall have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to cost-share agreements, and performance. Access shall include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WPO and O&M agreement; and collect information necessary to evaluate the conservation practice performance specified in the cost-share agreements. The NRCS representative shall make a reasonable effort to contact the participant prior to the exercising of this provision.

#### **§ 636.20 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the advice or action was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and grant relief because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR 635.3.

(b) If, during the term of a WHIP cost-share agreement, a participant has been found in violation of a provision of the cost-share agreement, the O&M agreement, or any document

incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.

#### **§ 636.21 Environmental services credits for conservation improvements.**

USDA recognizes that environmental benefits will be achieved by implementing conservation practices funded through WHIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on any such credits. However, NRCS retains the authority to ensure that the requirements for WHIP funded improvements are met and maintained consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

Signed in Washington, DC, on January 9, 2009.

**Arlen Lancaster,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. E9-827 Filed 1-15-09; 8:45 am]

**BILLING CODE 3410-16-P**

### **DEPARTMENT OF AGRICULTURE**

#### **Natural Resources Conservation Service**

#### **7 CFR Part 652**

**RIN 0578-AA48**

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

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Natural Resources Conservation Service (NRCS), an agency of the U.S. Department of Agriculture (USDA) is issuing an interim final rule for technical service provider (TSP) assistance as authorized under the Food Security Act of 1985, as amended by the Food, Conservation, and Energy Act of 2008. This interim final rule amends the Technical Service Provider (TSP) regulations to address changes made by the Food, Conservation, and Energy Act of 2008. The Secretary of Agriculture has delegated to NRCS the

responsibility for administering the authority for technical service provider assistance.

**DATES:** *Effective Date:* This rule is effective January 16, 2009.

*Comment Date:* Submit comments on or before March 17, 2009.

**ADDRESSES:** You may send comments (identified by Docket Number NRCS-IFR-08011) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending comments electronically.
- *Mail:* Technical Service Provider Team, Natural Resources Conservation Service, Technical Service Provider Assistance Comments, P.O. 2890, Room 5234-S, Washington, DC 20013.
- *Fax:* 1-202-720-5334.
- *Hand Delivery:* Room 5234-S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please ask the guard at the entrance to the South Office Building to call 202-720-4630 in order to be escorted into the building.
- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov/>; select the Farm Bill link from the menu; select the *Interim final* link from beneath the *Final and Interim Final Rules Index* title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720-2600 (voice and TDD).

#### **FOR FURTHER INFORMATION CONTACT:**

Team Leader, Technical Service Provider Team, NRCS, P.O. Box 2890, Washington, DC 20013-2890; phone: (202) 720-6731; fax: (202) 720-5334; or e-mail: [TSP2008@wdc.usda.gov](mailto:TSP2008@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Certifications**

##### *Executive Order 12866*

Pursuant to Executive Order 12866, this interim final rule with request for comment has been determined to be a significant regulatory action. The administrative record is available for public inspection in Room 5831 South Building, USDA, 14th and Independence Avenue, SW., Washington, DC. As required by Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this

preamble and a copy of the analysis is available upon request from the Team Leader, Technical Service Provider Team, Natural Resources Conservation Service, Room 5234-S, Washington, DC 20250-2890.

#### *Regulatory Flexibility Act*

NRCS has determined that the Regulatory Flexibility Act is not applicable to this interim final rule because the NRCS 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.

#### *Environmental Analysis*

The regulations promulgated by this interim final rule establish a process of using technical service providers to provide technical assistance to participants in NRCS conservation programs. The regulations do not take or authorize any actions that will have any effect on the human environment. Accordingly, a separate analysis for this rulemaking under the National Environmental Policy Act is not required.

#### *Civil Rights Impact Analysis*

A Civil Rights Impact Analysis has been completed regarding this interim final rule. The review reveals 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 the Team Leader, Technical Service Provider Team, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890.

#### *Paperwork Reduction Act*

Section 2904 of the 2008 Act provides that the promulgation of regulations and the administration of Title II of this Act shall be made without regard to chapter 35 of Title 44 of the United States Code, also known as the Paperwork Reduction Act. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

#### *Government Paperwork Elimination 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 the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an

online application and information system, TechReg, for use by the public and technical service providers.

#### *Executive Order 12988*

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. This interim final rule preempts State and local laws to the extent such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

#### *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.

#### *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.

#### *Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

Section 2904(c) of the Food, Conservation, and Energy Act of 2008 requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forgo SBREFA's usual Congressional Review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs authorized or amended by Title II in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

#### *Economic Analysis—Executive Summary*

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) has conducted a benefit-cost

analysis of the Technical Service Provider Initiative (TSP) as formulated for the interim final rule. This requirement provides decision makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimizes negative impacts to health, human safety, and the environment.

TSP provides another avenue for eligible participants to obtain the assistance they need to achieve the conservation objectives on their land—that is, through technical service providers. Eligible participants may choose to receive technical assistance directly from NRCS, by selecting a certified TSP from an approved list, or through an agreement NRCS has entered into with a TSP to provide the necessary assistance. TSPs are certified professionals, qualified to provide NRCS program participants with the technical services necessary to implement their conservation projects. Technical services include conservation planning, technical consultations, assistance with design and implementation of conservation practices, and related services.

The rule changes outlined in this interim rule do not address whether TSP could provide technical services at low cost or extend service in areas experiencing heavy workloads or in instances where NRCS personnel lack special skills or training in certain professional areas. Rather, the rule changes incorporate the changes made by the 2008 Act. Serious and thorough analysis of the actual cost and benefits of extending NRCS services has been addressed in its 2004 Cost Benefit Assessment (Use of Technical Service Providers to deliver technical assistance to conservation programs in the United States). This analysis found that TSP provides positive net benefits given potential future increased workloads on NRCS with little growth in the NRCS workforce. TSPs could enable NRCS program participants to begin their projects sooner than would otherwise be the case. This effect could increase environmental benefits for programs utilizing TSPs. In addition, the use of TSPs could potentially increase the amount of contracts that actually are completed rather than cancelled because of time delays. Neither the 2004 nor the 2008 TSP Cost Benefit Analysis provides a cost comparison of TSPs costs with internal NRCS costs.

The current analysis does not address any of the core principles associated with TSP, but addressed several discretionary policy items which were qualitatively assessed. None of these policy items were expected to produce

significant adverse effects to implementation of conservation practices and the overall operation of NRCS.

#### *Discussion of Program*

##### *Background*

NRCS is issuing an interim final rule for the implementation of TSP assistance, as authorized by section 1242 of the Food Security Act of 1985, as amended. In this preamble, NRCS provides background information about the TSP assistance provisions, the amendments made by the Food, Conservation, and Energy Act of 2008 (2008 Act), Public Law 110–246, 122 Stat. 1651, and the changes made to the TSP regulations to implement those statutory changes.

NRCS utilizes its technical expertise to provide information to eligible participants (producers, land owners, or entities) who apply to or are eligible to participate in conservation programs to help them make land management decisions and to implement conservation practices and systems. Through its conservation planning process, NRCS helps the participant develop a conservation plan and, subject to the availability of funds, the Department provides financial assistance to the eligible participant to implement conservation practices or systems.

The Farm Security and Rural Investment Act of 2002 (2002 Act), Public Law 107–171, expanded the authority for providing technical assistance for the implementation of conservation programs. Specifically, the 2002 Act amended section 1242 of the Food Security Act of 1985 to require USDA to provide technical assistance under the Food Security Act conservation programs to a producer eligible for that assistance “directly \* \* \* or at the option of the producer, through a payment \* \* \* to the producer for an approved third party, if available.” The Secretary of Agriculture delegated authority to implement section 1242 to NRCS.

NRCS published an interim final rule on November 21, 2002 (67 FR 70119) to enact the technical service provider assistance provisions of the 2002 Act. Through the interim final rule, NRCS: (1) Established a certification process under which NRCS would evaluate and approve individuals, entities, and public agencies as eligible to provide conservation technical assistance for certain conservation programs; (2) established criteria by which NRCS would evaluate all potential providers of technical assistance; (3) set forth

conditions and procedures by which NRCS would determine if a TSP has failed to provide adequate technical services and should not remain certified as a provider; and (4) requested comments on proposed methods for determining payment rates for reimbursing participants for technical services obtained from TSPs. On March 24, 2003, NRCS published an amendment to the interim final rule (68 FR 14131), establishing the process for determining payment levels. A second amendment was published on July 9, 2003 (68 FR 40751) that established a limited exception to certification and payment requirements when USDA was partnering with a State, local, or Tribal government to carry out its duty to provide technical services. On November 29, 2004, NRCS published the final rule (69 FR 69450) on technical service provider assistance, limiting certification requirements to technical service providers hired directly by program participants, specifying qualification requirements for technical service provider services acquired by the Department, incorporating public comment, and making organizational improvements.

##### *The 2008 Act*

Section 2706 of the 2008 Act amended section 1242 of the Food Security Act of 1985 to “increase the availability and range of technical expertise available to eligible participants to plan and implement conservation measures.” Specifically, section 2706 of the 2008 Act amends section 1242 of the Food Security Act of 1985 to:

- Define eligible participants as producers, landowners, and entities that are eligible to participate in Title II programs or under the Agricultural Management Assistance (AMA) program authorized by Section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524). The inclusion of eligible participants under AMA is an expansion of the TSP applicability.

- Require the Secretary to provide national criteria for the certification of third party providers and to approve any unique certification requirements that are proposed by the Agency at the State level.

- Provide specific authority for the Secretary to provide technical assistance for conservation programs authorized under Title XII of the 1985 Act and the Agricultural Management Assistance program under section 524 of the Federal Crop Insurance Act, 7 U.S.C. 1524, through an agreement with a third party.

- Establish that an agreement between the Secretary and a third party provider shall be for 1 year at a minimum and not to exceed 3 years, and provide for renewal of agreements.

- Require the Secretary to review the certification requirements for third party providers within one year of enactment of the 2008 Act and make any adjustments considered necessary by the Secretary to improve participation.

- Prohibit activities or services that are customarily provided at no cost by a third party provider from being eligible for TSP payment.

- Require the Secretary to establish fair and reasonable payment rates for technical services provided by third party providers.

- Authorize as eligible for payment technical services provided directly to eligible participants (such as conservation planning, education and outreach, and assistance with design and implementation of conservation practices) or related technical services that accelerate conservation program delivery.

##### *Overview of Technical Service Provider Assistance*

In 2003, NRCS launched its website TechReg, an internet application, through which individuals, businesses, and public agencies may apply to become certified TSPs. TechReg also serves as a registry through which program participants may obtain certified TSPs. Additionally, payment rates for particular technical service activities are available on TechReg. As of August 2008, nearly 1,700 entities (individuals or businesses) were certified in the TechReg registry. From October 2003 through September 2008, NRCS expended approximately \$217 million for technical service provider assistance.

##### **Description of Changes to the Regulation**

###### *Covered Programs*

Section 2706 adds the Agricultural Management Assistance (AMA) Program, 7 U.S.C. 1524(b), to the list of programs through which technical service provider assistance may be provided to eligible participants. Consequently, this rulemaking adds reference to AMA at § 652.1(a) and § 652.2. Since the TSP rule only provides assistance for certain conservation activities, eligible activities under the AMA will be limited to those related to conservation.

###### *Technical Service Contracts.*

Section 2706 adds section 1242(g)(2), Technical Service Contracts, to the Food

Security Act of 1985 (the 1985 Act). This section provides that even in situations in which financial assistance is not provided under a Title XII program or AMA, the Secretary may enter into technical service contracts with eligible participants for the purpose of providing assistance in the planning, design, or installation of an eligible conservation practice.

The Managers' Report to the 2008 Act identifies increasing the availability of technical assistance as a priority. This authority to enter into technical service contracts will assist landowners in meeting the conservation needs on their lands. The interim final rule establishes that technical service contracts are available only to eligible participants who do not receive financial assistance through programs included in Title XII of the Food Security Act of 1985 and the AMA. In addition, technical service contracts will only be available for technical assistance from TSPs for the planning, design, or installation of conservation practices. NRCS adds a new § 652.5(e) to incorporate the availability of technical service contracts and redesignates the subsequent paragraphs accordingly.

#### *NRCS Training of TSPs*

The interim final rule clarifies the role of NRCS in training and sets forth conditions and procedures by which NRCS may provide training to third party providers to assist them in meeting the certification requirements in technical service categories that are established by policy. NRCS adds language to § 652.3(c)(4) that specifies that NRCS may provide limited training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such technical expertise. However, training to be provided by NRCS will be limited to training about NRCS regulations, policies, procedures, processes, and business and technical tools unique to NRCS.

#### *Related Technical Services*

Section 2706 of the 2008 Act amends the 1985 Act to add section 1242(f)(4), Eligible Activities, which authorize payment to TSPs for "related technical assistance services that accelerate conservation program delivery." Related services are in addition to technical services provided directly to an eligible participant and have the purpose of accelerating conservation program delivery. NRCS has identified "related technical assistance services" in this rulemaking to include conservation planning documentation, payment

scheduling and documentation, market survey information related to the establishment of easement compensation rates, and similar activities which result in more timely implementation of conservation programs. NRCS adds a new § 636.6(b) to incorporate the ability to make payment for related technical services, and redesignates the subsequent paragraphs accordingly.

#### *TSP Payment Rates*

Section 2706 of the 2008 Act added section 1242(f)(5), Payment Amounts. This section provides that the Secretary shall establish fair and reasonable amounts of payments for technical services provided by third party providers.

Currently, NRCS rates are based on the cost to the agency to perform the technical service and are established by the NRCS National Office. The rates include costs associated with planning, design, installation, checkout of conservation practices, and overhead costs.

This rulemaking changes the existing policy by establishing that the NRCS State offices will determine fair and reasonable payment rates for TSP assistance using guidelines established by the National Office and local NRCS cost, market, and procurement data that are available. NRCS will emphasize using market rate data where available to determine TSP payment rates. The National Office will publish the State payment rates for each practice on the TechReg Web site. NRCS revises § 652.5 by removing reference to "not-to-exceed" rates and specifying that NRCS will use NRCS cost data, procurement data, and market data to establish the payment rates for TSP assistance.

NRCS will establish the following process to ensure rates are fair and reasonable:

1. At the National level, NRCS will establish guidelines for State Conservationists to develop the payment rates to maintain consistency and quality control. Common guidelines will assist in ensuring consistency in factors and processes among States, while leaving flexibility for variation among States.
2. The State Conservationists will determine fair and reasonable rates for the conservation practices in their respective States. The State Conservationists will establish applicable TSP payment rates based on local cost data, market data, and procurement data as appropriate for the practice.
3. The NRCS National Office will review and approve State payment rates

to ensure regional consistency and fairness, and provide a mechanism for review and quality control for the guidelines established in process Step 1. The review and quality control mechanism will include regular and systematic State submittal of payment data to the National office, contract sampling, and a risk assessment of complex, high-volume, and cost-intensive technical services.

NRCS considered establishing national-level TSP payment rates using NRCS cost data, procurement data, and market data as determined by the NRCS National Office. These rates could be adjusted at the State level based on geographical differences. This option was rejected because it would create a duplicative workload at the national and state level by requiring national reasonable TSP rates be developed for all practices and plan types, while still requiring the State level to evaluate individually if the costs needed to be adjusted at the State level. Additionally, rates established at the national level may not be perceived as reasonable by third party providers in States.

NRCS also considered retaining the current methodology where the National Office uses agency cost data to calculate TSP payment rates to participants for eligible practices under conservation programs. However, NRCS experience administering TSP authority over the past 5 years is that such rates based solely upon NRCS costs do not incorporate necessary profit margins to make such rates approximate the rate that the TSPs in the private sector actually charge for their services. NRCS believes utilizing procurement and market data will provide this additional cost consideration that will be considered more fair and reasonable by NRCS conservation program participants, which may increase their participation in the TSP program. Therefore, NRCS is using this rulemaking to change the rate setting methodology from one based solely on NRCS costs to provide such services to one that also includes an emphasis on local market rates.

#### *Certification Requirements*

Section 2706 of the 2008 Act made a change to TSP certification requiring the Secretary to provide national criteria for the certification of third party providers and to approve any unique certification requirements that are proposed at the State level. Currently, the TSP rule provides national criteria including that a TSP must meet State, Tribal, and professional business licensing requirements. No additional criteria will be added at the national level. In

addition, experience has shown that unique state level requirements beyond licensing and state law may be a hindrance to effective implementation of the TSP provision. Consequently, NRCS is taking the opportunity to clarify its policy that licensing and state law requirements will be the only state-level certification criteria allowed. No change to the regulation is necessary since state law and licensure requirements are already addressed at section 652.21(a)(2).

Section 2706 of the 2008 Act also requires the Department to review TSP certification requirements within one year of enactment of the 2008 Act to determine if adjustments are needed to improve participation. In accordance with the new statutory requirement, NRCS will review the TSP certification requirements based upon the criteria that NRCS employees must meet to be authorized to provide technical assistance related to particular conservation practices or activities. Changes to the certification requirements for each TSP category will reflect any changes in the NRCS Field Office Technical Guide, such as conservation practices added or discontinued. Additionally, any changes made for a TSP requirement will be reflected in the Field Office Technical Guide, where applicable. The review also will consider the needs of specialty crop, organic farming, and precision agriculture technologies with respect to the completeness and appropriateness of the conservation practice standards and the associated TSP certification requirements. These reviews, though intended to improve participation among TSPs, are administrative matters that do not require changes to this interim final rule.

#### **Summary of Changes by Section**

The TSP regulation at 7 CFR part 652 is divided into three subparts. Subpart A sets forth the general provisions related to the delivery of technical services. Subpart B sets forth the certification criteria and process NRCS utilizes to evaluate a technical service provider to determine whether such provider is eligible to provide technical assistance. Subpart C sets forth the process and causes under which a technical service provider may become decertified and, therefore, ineligible to provide technical services. All of the changes to the TSP regulations through this interim final rule are to provisions in Subpart A.

Subpart A describes how program participants choose technical service providers, and how program participants may receive payment from

the Department for those services. Subpart A also describes how the Department will expand its delivery of technical services to program participants. The Department must follow existing procurement and financial assistance laws when it enters into transactions to expand the availability of technical services.

#### **Section 652.1 Applicability**

In § 652.1(a), NRCS adds the conservation activities in the Agricultural Management Assistance Program to the programs covered by technical service provider assistance provisions. NRCS also incorporates in this section the 2008 Act clarification that there are three methods by which NRCS may deliver technical services to an eligible participant, including:

1. Directly;
2. Through an agreement between NRCS and a third party provider, as provided in § 652.6 of this part; or
3. Through a payment to an eligible participant for an approved third-party provider.

In § 652.1(b), NRCS adds the term “conservation planning” to reflect the authority under the 2008 Act for NRCS to enter into a technical service contract with an eligible participant for the development of a conservation plan. NRCS revises the definition of “Technical service” to correspond to language included in the definition of “Technical assistance” the 2008 Act, which includes technical services and technical infrastructure. Because the scope of this regulation is constrained to “technical services” provided by Technical Service Providers, only that portion of the 2008 Act definition is reflected in these regulations. The term “Indian lands” is added after “private land” to clarify that technical service providers may assist program participants on Indian lands. This change makes the regulation consistent with land eligibility as established for the programs for which technical services are provided under this part.

#### **Section 652.2 Definitions**

NRCS replaces the term “participant” with the term “eligible participant” and revises the definition to correspond to the definition in the 2008 Act. NRCS also includes reference to the Agricultural Management Assistance Program in the definitions for “program contract” and “technical service contract.” NRCS adds the definition of “Indian land” to clarify lands eligible to receive technical service from technical service providers as established under § 652.1(b).

#### **Section 652.3 Administration**

NRCS re-designates § 636.3(c)(4) as § 636.3(c)(5) and adds a new § 636.3(c)(4) to incorporate the limited circumstances under which NRCS will provide training to potential technical service providers. NRCS may provide training to technical service providers about its regulations, policies, procedures, processes, and business and technical tools that are unique to NRCS. In this manner, NRCS intends to meet its responsibility under the 2008 Act to encourage the participation of qualified individuals and entities in providing technical services to NRCS program participants.

#### **Section 652.5 Eligible Participant Acquisition of Technical Services**

NRCS adds new language to this section providing for technical service contracts if an eligible participant wishes to receive technical assistance but is not receiving financial assistance for implementation of the conservation practices under one of the Title XII conservation programs or AMA.

NRCS also incorporates changes needed to implement the 2008 Act's requirement that NRCS establish fair and reasonable payment rates. NRCS will establish national guidelines for the establishment of payment rates by NRCS State offices. NRCS State Conservationists will use these guidelines and local cost, procurement, and market data to determine payment rates for each technical service activity provided in their respective States. The payment rates established at the State level will be reviewed, approved, and published at the national level through the TechReg Web site.

#### **Section 652.6 Department Delivery of Technical Services**

NRCS adds language to § 652.6 to expand the ability to make payments under TSP provisions for “related technical assistance services.” Related technical assistance services include activities or services that accelerate conservation program delivery, including such activities as development, processing, or implementation of a program contract, such as recording conservation planning decisions and specifications.

NRCS incorporates language in this section to clarify that NRCS may enter into cooperative agreements or contracts with another agency or with a non-Federal entity to provide technical assistance to eligible program participants, in accordance with revisions made to section 1242(c)(2) of the 1985 Act. While NRCS previously

identified such cooperative agreements and contracts in the TSP rule, the parties with whom NRCS would enter such agreements were not previously identified specifically. NRCS also incorporates the requirement that these agreements are for a minimum of one year, not to exceed three years in duration, and are renewable.

#### List of Subjects in 7 CFR Part 652

Natural resources, Soil conservation, Technical assistance, Water resources.

■ For the reasons stated in this preamble, the Natural Resources Conservation Service amends Part 652 of Title 7 of the Code of Federal Regulations as follows:

#### PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

■ 1. The authority citation for Part 652 continues to read as follows:

**Authority:** 16 U.S.C. 3842.

■ 2. Section 652.1 is amended by revising the second sentence of paragraph (a) and revising paragraph (b), to read as follows:

##### § 652.1 Applicability.

(a) \* \* \* The Food Security Act of 1985, as amended, requires the Secretary to deliver technical assistance to eligible participants for implementation of its Title XII Programs and the conservation activities in the Agricultural Management Assistance Program, 7 U.S.C. 1524, directly, through an agreement with a third party provider, or, at the option of the producer, through payment to the producer for an approved third party provider. \* \* \*

(b) Technical service providers may provide technical services to eligible participants in conservation planning and in the planning, design, installation, and check-out of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land where there is a direct private land benefit.

\* \* \* \* \*

■ 3. Section 652.2 is amended by revising the definitions for “program contract” and “technical service”, adding definitions for “eligible participant”, “Indian land” and “technical service contract”, and removing the definition for “participant”.

The revisions and additions read as follows:

##### § 652.2 Definitions.

\* \* \* \* \*

*Eligible Participant* means a producer, landowner, or entity who is

participating in, or seeking to participate in, a conservation program covered by this rule in which the producer, landowner, or entity is otherwise eligible to participate.

\* \* \* \* \*

*Indian land* means all lands held in trust by the United States for individual Indians or Tribes, or all lands, titles to which are held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain Tribes. The term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government-owned land under the Bureau of Indian Affairs jurisdiction.

\* \* \* \* \*

*Program Contract* means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a program authorized under Title XII of the Food Security Act of 1985, as amended, or the Agricultural Management Assistance Program, authorized under 7 U.S.C. 1524.

\* \* \* \* \*

*Technical Service Contract* means a document that specifies the rights and obligations of an eligible participant to obtain technical services from a technical service provider where the eligible participant will not receive financial assistance for the implementation of the practice paid for in the technical service contract through participation in a Title XII conservation program or the Agricultural Management Assistance Program, 7 U.S.C. 1524.

*Technical service* means the assistance provided by technical service providers, including conservation planning; conservation practice design, layout, and installation; and certification that the conservation practice meets NRCS standards and specifications.

\* \* \* \* \*

■ 4. Section 652.3 is amended by removing the word “and” from the end of paragraph (c)(3), redesignating paragraph (c)(4) as (c)(5), and adding a new paragraph (c)(4) to read as follows:

##### § 652.3 Administration.

\* \* \* \* \*

(c) \* \* \*

(4) Provide training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such technical expertise. However, any

training provided by the Department will be limited to training about Department regulations, policies, procedures, processes, and business and technical tools unique to NRCS; and

\* \* \* \* \*

■ 5. Section 652.5 is amended by revising paragraph (e), redesignating paragraph (j) as paragraph (k), redesignating paragraphs (f) through (i) as paragraphs (g) through (j), and adding new paragraphs (f), (l), (m) to read as follows:

##### § 652.5 Eligible participant acquisition of technical services.

\* \* \* \* \*

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans or activity plans suitable for subsequent incorporation into a program contract.

(f) The Department may make payment to eligible participants who have a technical service contract and utilize it for technical assistance from a technical service provider.

\* \* \* \* \*

(l) The Department shall not make payment for activities or services that are customarily provided at no cost by a technical service provider to a participant as determined by the State Conservationist.

(m) Payment rates for technical services acquired by participants.

(1) NRCS will calculate TSP payment rates for technical services using national, regional, and locally determined price data.

(2) Establishing TSP payment rates.

(i) NRCS will establish guidelines to analyze the local pricing information using a standardized method.

(ii) The State Conservationist will establish TSP payment rates in each State for the various categories of technical services. The State Conservationist will determine the rates according to local NRCS cost data, procurement data, and market data.

(iii) NRCS at the National Office will review and approve State payment rates to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between or within States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) NRCS at the State and National levels will review payment rates annually, or more frequently as needed, and adjust the rates based upon data from existing procurement contracts, Federal cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis, in

response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific TSP payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

■ 6. Section 652.6 is amended by redesignating paragraphs (b) through (e) as paragraphs (d) through (g), adding new paragraphs (b) and (c), and amending redesignated paragraph (e) by adding a second sentence to read as follows:

**§ 652.6 Department delivery of technical services.**

\* \* \* \* \*

(b) The Department may also enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument with technical service providers to provide related technical assistance services that accelerate conservation program delivery. Related technical assistance services may include activities or services that facilitate the development, processing, or implementation of a program contract, such as recording conservation planning decisions and specifications.

(c) NRCS may enter into agreements with other agencies or with a non-Federal entity to provide technical services to eligible participants.

\* \* \* \* \*

(e) \* \* \* Any contract, contribution agreement, cooperative agreement, or other appropriate instrument entered into under this section shall be for a minimum of one year, shall not exceed three years in duration, and may be renewed upon mutual agreement of the parties.

\* \* \* \* \*

Signed this 9th day of January 2009, in Washington, DC.

**Arlen L. Lancaster,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. E9-828 Filed 1-15-09; 8:45 am]

**BILLING CODE 3410-16-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 944, 980, and 999

[Docket No. AMS-FV-07-0110; FV07-944/980/999-1 FR]

#### Fruit, Vegetable, and Specialty Crops—Import Regulations; Proposed Revision to Reporting Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the reporting requirements for imports of commodities regulated under section 608(e) (hereinafter referred to as “8e”) of the Agricultural Marketing Agreement Act of 1937. These changes require that the inspection certificates generated for each lot of such commodities include the entry number from the U.S. Customs and Border Protection (CBP or Customs) documentation that accompanies that lot. The changes also require that importers of raisins, dates, and dried prunes report products exempt from 8e import regulations on AMS Form FV-6—“Importers’ Exempt Commodity Form,” which is the same form that is currently used by importers of all other commodities exempt from 8e import regulations. These changes are intended to streamline the tracking of imported products and provide uniformity in electronic reporting systems used by the industries and the Department of Agriculture (USDA).

**DATES:** *Effective Date:* February 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rick Lower or Jared Burnett, 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:

*Richard.Lower@usda.gov or JaredK.Burnett@usda.gov.*

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 final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

Section 8e provides that whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. To ensure that these requirements are met, the Act also authorizes USDA to perform inspections and issue inspection certificates for such imported commodities.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify the information that should be included on each inspection certificate issued for regulated imports of fruits, vegetables, and specialty crops, respectively. Part 999 further specifies which forms importers should use to report to USDA and CBP imports of raisins, dates, and dried prunes that may be exempt from other 8e requirements. Exempt commodities are those which may be imported for purposes such as processing, donation to charitable organizations, or animal feed.

USDA is issuing this rule in conformance with Executive Order 12866.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

#### Customs Entry Number

Under the import regulations contained in parts 944, 980, and 999, inspection certificates issued for imports of certain fruits, vegetables, and specialty crops, respectively, must include specific information about the lot being inspected. In addition to stating whether the lot meets the import requirements, such information as the date and place of inspection; the name of the applicant; and the variety, quantity, and identifying marks of the lot inspected are required.

Previously, many inspectors have noted the customs entry number pertaining to the lot being inspected, which is taken from the Customs documentation accompanying that lot, in the “Remarks” section or elsewhere on the inspection certificate. The unique entry number is generated for each lot by CBP, and may be found on any one of the various forms used to report imported lots of fruit, vegetable, and specialty crop commodities. USDA has found that the entry number provides an efficient way to identify individual lots of commodities and to cross-reference all the documents pertaining to each lot. If, for instance, a certain lot fails to meet