

# Rules and Regulations

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## 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:** Final rule.

**SUMMARY:** This Final rule amends the Natural Resources Conservation Service (NRCS) regulations for technical service provider (TSP) provisions under the Food Security Act of 1985. The Food, Conservation, and Energy Act of 2008 (2008 Act) amended the TSP provisions, and NRCS published an interim final rule on January 16, 2009, to incorporate these changes. This final rule responds to public comments received to the interim final rule, and confirms the changes made to the TSP regulations, with minor adjustments.

**DATES:** *Effective date:* This rule is effective February 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Barbara Eggers, Acting Team Leader, Technical Service Provider Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5236 South Building, Washington, DC 20250; telephone: (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, the Office of Management and Budget determined that this final rule is not a significant regulatory action. NRCS conducted an economic analysis of the

potential impacts associated with this program when it promulgated the January 16, 2009, interim final rule. A copy of the analysis is available upon request from Barbara Eggers, Acting Team Leader, Technical Service Provider Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5236 South Building, Washington, DC 20250.

###### *Regulatory Flexibility Act*

NRCS has determined that the Regulatory Flexibility Act is not applicable to this final rule because 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 final rule establish a process of using TSPs to provide technical assistance to participants in certain USDA 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*

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this final rule discloses no disproportionately adverse impact for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the historically underserved groups have participated in USDA programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that USDA programs, including TSPs, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. TSP applies to all persons equally regardless of race, color, national origin, gender, sex, or disability status. Therefore, the TSP rule has no adverse civil rights implications. Copies of the Civil Rights Impact Analysis may

be obtained from Barbara Eggers, Acting Team Leader, Technical Service Provider Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5236 South Building, Washington, DC 20250.

###### *Paperwork Reduction Act*

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

###### *Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork Elimination Act 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 TSPs.

###### *Executive Order 12988*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this final rule are not retroactive. The provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this 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.

###### *Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore,

NRCS concludes that this final rule does not have Federalism implications.

#### *Executive Order 13175*

This final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule on Indian tribal governments and has concluded that this rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *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 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*

Section 2904(c) of the 2008 Act requires that NRCS use the authority in section 808(2) of Title 5, U.S.C., which allows an agency to forgo the Small Business Regulatory Enforcement Fairness Act of 1996 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.

### **Discussion of Program**

#### *Background*

NRCS is issuing a final rule for the TSP assistance regulation at 7 CFR part 652. NRCS published an interim final rule in the **Federal Register** on January 16, 2009 (74 FR 2800), to implement

changes made as a result of the 2008 Act. This final rule responds to comments made during the interim final rule public comment period and makes minor adjustments to the TSP regulation at 7 CFR part 652.

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, provides financial assistance to the eligible participant to implement conservation practices or systems.

On November 29, 2004, NRCS published a final rule (69 FR 69450) on TSP assistance (TSP 2004 final rule) that creates the current regulatory structure for TSP implementation. 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 the process NRCS utilizes to evaluate a TSP to determine whether such provider is eligible to provide technical assistance. Subpart C sets forth the process and causes under which a TSP may become decertified and, therefore, ineligible to provide technical services.

The January 16, 2009, interim final rule only made changes to provisions in Subpart A of the TSP regulations. Subpart A describes how program participants choose TSPs and how program participants may receive payment from USDA for those services. Subpart A also describes how USDA expands its delivery of technical services to program participants to meet increased program participation. In particular, USDA follows existing procurement and financial assistance laws when it enters into transactions to expand the availability of technical services.

#### *The 2008 Act and the January 16, 2009, Interim Final Rule*

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." In the interim final rule published on January 16, 2009, NRCS amended 7 CFR part 652 to include changes made by section 2706 of the 2008 Act as follows:

- *Covered Programs.* The interim final rule incorporated reference to the Agricultural Management Assistance (AMA) program. Since the TSP rule only provides assistance for certain conservation activities, eligible activities under the AMA are limited to those related to conservation.

- *Technical Service Contracts.* The interim final rule established that technical service contracts are available only to eligible participants who do not receive financial assistance through Title XII programs and AMA. In addition, the interim final rule specified that technical service contracts will only be available for technical assistance from TSPs for the planning, design, or installation of conservation practices.

- *NRCS Training of TSPs.* The interim final rule clarified the role of NRCS in training and described the conditions and procedures by which NRCS provides training to third party providers to assist them in meeting the certification requirements for the different technical service categories established by NRCS policy. NRCS' training to others is limited to matters concerning NRCS regulations, policies, procedures, processes, and business and technical tools unique to NRCS.

- *Related Technical Services.* In the interim final rule, NRCS identified "related technical assistance services" 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 timely implementation of conservation programs.

- *TSP Payment Rates.* The interim final rule identified that the NRCS State offices determine fair and reasonable payment rates for TSP assistance using guidelines established by National Headquarters and available local NRCS cost, market, and procurement data. The interim final rule also indicated that NRCS emphasizes using market rate data, where available, to determine TSP payment rates.

- *Certification Requirements.* Section 2706 of the 2008 Act made a change to TSP certification requiring the Secretary of Agriculture 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. The TSP rule already provided national criteria including that a TSP must meet State, tribal, and professional business licensing requirements. The interim final rule did not incorporate any additional criteria. However, NRCS clarified its policy that licensing and

State law requirements will be the only State-level certification criteria allowed.

#### *Overview of Public Comments*

NRCS received 25 responses encompassing 31 comments. The respondents included 14 State and local governmental agencies, 7 non-governmental organizations, one tribe, and 3 individuals. The comments encompassed issues related to agreements, applicability, certification, definitions, general program rules, outreach, payments, procurement, and assistance to socially disadvantaged producers. NRCS has organized its response according to these topic areas.

#### *Agreements*

*Comment:* Nine respondents raised two concerns regarding TSP cooperative and contribution agreements. The respondents recommended: (1) NRCS use multi-year umbrella agreements; and (2) increased flexibility be provided to participants through TSP contract options.

Additionally, three respondents encouraged NRCS to change its agreement policy to allow less than 50 percent partner match under contribution and cooperative agreements.

#### *Response:*

*Multi-year agreements.* NRCS agrees with the comments that multi-year agreements can be more efficient since they can be amended yearly to reflect funding allocations, workload, agency capacity, and resource priorities. Section 2706 of the 2008 Act amended section 1242 of the Food Security Act of 1985 to establish that an agreement between USDA and a third party provider will be for one year at a minimum, and not to exceed 3 years. NRCS is using the flexibility provided by this statutory amendment. Since NRCS has determined that its current policy addresses adequately the use of multi-year agreements, no changes were made in response to these comments.

*Increased Flexibility.* The comments focused on utilizing agreements (contribution, cooperative, *etc.*) as a method to extend outreach efforts to historically underserved landowners, and the commenter's belief that such outreach has not been sufficient in previous years. The respondents identified that conservation districts could assist with these outreach efforts by using flexibility in providing TSP contract options to participants directly through an agreement with a third party provider.

However, the contracting and agreement regulations which respondents refer to as utilized for

outreach are in actuality provisions of Federal contracting law that ensures sufficient technical services are available when NRCS carries out technical assistance. NRCS appropriately uses other authorities to specifically ensure outreach to historically underserved farmers. Specifically, under section 1244 of the Food Security Act of 1985, each of the NRCS conservation programs makes available funds to encourage program participation by beginning and socially disadvantaged farmers and ranchers. Additionally, NRCS has modified its ranking criteria under its various programs to ensure that small farm operations have full opportunity to participate. NRCS will utilize fully the flexibility to provide technical assistance to small farm operators, including historically underserved producers, through all available mechanisms, including agreements with conservation districts and others. No changes were made in response to these comments.

*Contribution Requirements.* Three respondents encouraged NRCS to consider revising the policy to allow less than 50 percent match from partners under cooperative and contribution agreements.

Section 714 of the Agriculture Appropriations Act for FY 2001 (Public Law 106-387) provided permanent authority codified at 7 U.S.C. 6962a for the Secretary to enter into cooperative arrangements with other entities to carry out activities of mutual interest. Title 7 U.S.C. 6962a provides:

Notwithstanding any other provision of law (including provisions of law requiring competition), the Secretary of Agriculture may hereafter enter into cooperative agreements (which may provide for the acquisition of goods or services, including personal services) with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, if the Secretary determines the objectives of the agreement will: (1) serve a mutual interest of the parties in carrying out the programs administered by NRCS; and (2) all parties will contribute resources to the accomplishment of these objectives: *Provided*, that Commodity Credit Corporation funds obligated for such purposes will not exceed the level of obligation by the Commodity Credit Corporation for such purposes in FY 1998.

NRCS identifies cooperative agreements entered into under section 714 authority as "contribution agreements." Under this authority, NRCS works with agencies and organizations throughout the country to implement its programs.

On November 21, 2002, when NRCS published its initial rulemaking for TSP,

NRCS established that they would only enter into a contribution agreement with a certified TSP if the TSP contributed at least 50 percent of the technical services needed to accomplish the goals of the project under which the contribution agreement is entered. This requirement is consistent with NRCS policy regarding matching requirements for all contribution agreements. In developing the policy, the agency determined that 50 percent was the appropriate level of match requirement to ensure that implementation of the contribution agreement authority did not undermine the competitive financial assistance and procurement processes and helped show a mutuality of interest.

On July 9, 2003, NRCS published an amendment to 7 CFR part 652 providing a limited exception to the certification requirements for State, local, and tribal government. This amendment maintained the 50 percent match for contribution agreements. When NRCS published a final rule for TSP implementation in November 2004, NRCS indicated that it had received numerous comments regarding the 50 percent match requirement for contribution agreements. In its response, NRCS indicated that they reaffirmed that the mutual goals of the agency and its partners would best be served if the other party, or parties, shared at least 50 percent of the cost. However, NRCS recognized that while its experience at that time was that the programs were being effectively delivered under those contribution rate requirements, it would reconsider the matter should an interruption in program delivery appear to result from the 50 percent contribution agreement. Therefore, NRCS removed the regulatory requirement for the 50 percent match, but retained the requirement in its contribution agreement policy.

Because the 50 percent match requirement is not regulatory, NRCS is not required to amend the TSP regulation in order to effectuate a new match requirement. However, NRCS has reviewed its contribution agreement policy in response to the comments received and considered whether it should retain the existing 50 percent match, establish a new match requirement, or remove any established level of match requirement for contribution agreements provided a contribution of resources can be documented. NRCS will issue new policy which includes the flexibility for the Chief and others identified in the Delegation of Authority to waive the 50 percent contribution requirement in lieu of in-kind services when the entity provides a narrative which

demonstrates that the 50 percent requirement poses a financial burden on the entity.

#### Applicability

Seven respondents raised two concerns related to the applicability section, § 652.2 of the interim final rule.

*Comment:* Two respondents requested clarification about why installation was included among the list of TSP activities.

*Response:* Section 652.2 of the TSP rule includes installation among the list of TSP activities since technical services include activities that occur during implementation of a conservation practice. Installation includes laying out the practice boundaries and elevations and discussing the standards with the contractor. Additionally, a design may need minor adjustments to address specific site conditions that could not be known until practice implementation. TSPs provide oversight during practice implementation to help ensure that plan specifications are understood and applied by the contractor. Therefore, no changes were made in response to this comment.

*Comment:* Seven respondents stated the list of services provided by TSPs was too restricted and limited, and recommended expanding the list to reflect the 2008 Act changes, such as forestry planning, education, and outreach.

*Response:* NRCS concurs with the comments related to expanding the list to reflect the 2008 Act changes. The 2008 Act indicates a TSP may provide technical services such as conservation planning, education and outreach, and assistance with design and implementation of conservation practices. In this final rule, NRCS has modified § 652.1(b) to identify that TSPs may provide technical services to eligible participants in conservation planning, education and outreach, and assistance with design and implementation of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land. However, NRCS determined that forestry planning does not need to be added specifically because it is already included in the definition of conservation planning.

#### Certification

Four concerns were raised on the topic of certification.

*Comment:* An individual recommended that the certification review process guard against adding arbitrary new requirements.

*Response:* Section 2706 of the 2008 Act required that National Headquarters review any unique State-level certification criteria. The preamble to the interim final rule identified that licensing and State law requirements are the only State-level certification criteria that will be allowed. However, the interim final rule did not need to amend the TSP regulation itself to effect this statutory requirement. During its review of certification criteria, NRCS will only institute new certification requirements if NRCS determines that the requirements are essential to ensuring quality assistance to program participants is maintained.

*Comment:* Six respondents believe that public agency providers meet most certification requirements by virtue of their employment with the exception that they demonstrate familiarity with NRCS regulations and policies. In particular, the respondents expressed that the expertise and training required for natural resource professionals to be employed by State agencies should generally be regarded as sufficient to meet the § 652.21(a)(1) and (2) requirements. The respondents recommended also deleting § 652.24(b) because they believe it requires NRCS to use the certification process for individuals at § 652.22, thereby mooting the opportunity to certify groups of individuals under a public agency application pursuant to § 652.24.

*Response:* NRCS notes that the interim final rule did not make any changes to Subpart B, and thus the respondents' comments are beyond the scope of the interim final rule public comment. However, NRCS will address the respondents' comments as follows: NRCS establishes the minimal certification criteria for a TSP to perform a particular service and identifies these according to technical service categories. Section 652.21 addresses certification criteria and requirements for all TSPs. Section 652.22 addresses the specific requirements for individuals, § 652.23 addresses specific requirements for private-sector entities, and § 652.24 addresses specific requirements for public agencies.

While NRCS recognizes the professionalism possessed by employees of other public agencies, NRCS does not believe that it is appropriate for the agency to certify to the knowledge and expertise of someone else's employees simply based upon their employment. Therefore, NRCS incorporated under § 624.22, that a public agency must identify at least one person in its employ who is a certified TSP, or is applying for certification as part of the

public agency's application for certification.

This criterion also exists to ensure that responsibility for any work performed by non-certified individuals is assumed by a certified individual that is authorized to act on the public agency's behalf. NRCS made the determination that a public agency could not be considered qualified to perform technical services for NRCS conservation program participants unless it employed at least one person who was certified and could oversee the work of other employees.

This requirement for public agency certification mirrors the requirement that NRCS has under its "job approval authority," where an NRCS employee can only perform particular technical services if the employee has demonstrated the qualifications to perform the work or the work is reviewed and approved by someone who is. No changes were made in response to these comments.

*Comment:* One respondent urged NRCS to carry out its review of the certification process in a timely, transparent, and participatory manner and observed that the pool of TSPs would increase dramatically were NRCS to assume costs of bonding and liability for TSPs.

*Response:* No change was made in response to this comment. Any bonding or liability insurance is the responsibility of the contractor, and USDA cannot assume the liability of others. However, NRCS will continue to strive to review the certification process in a timely and transparent manner as recommended by the respondent.

*Comment:* One respondent recommended that NRCS clarify the process that will be used to evaluate third party providers and how the adjustments will be made.

*Response:* All TSPs are required to submit documentation of certification for services to be provided along with actual documents for evaluation to ensure technical adequacy. Further clarification is available on the TechReg Web site at: <http://techreg.usda.gov>.

Quality assurance reviews or spot checks determine if a TSP meets policy, procedures, standards, specifications, and other requirements. In the case that a deficiency is found, NRCS will document the deficiencies and notify the TSP and participant of the deficiency and specify necessary corrective action to remediate the deficiency within a reasonable period of time. Failure to correct the deficiency in the timeframe set by NRCS triggers the decertification process.

### Definitions

*Comment:* Five respondents identified that there appears to be two definitions for technical services which requires a technical correction.

*Response:* The appearance of two definitions for technical services occurred due to an error in the interim final rule amendatory language where the new and revised definitions did not appear in correct alphabetical order. NRCS will remove the definition promulgated during the 2004 TSP final rule, and is revising the January 16, 2009, interim final rule definition as a conforming amendment in response to this comment. In particular, technical services in this final rule will read as follows: Technical service means the technical assistance provided by TSPs, including conservation planning; education and outreach; and the design, installation, and check-out of approved conservation practices.”

*Comment:* One respondent recommended that NRCS clarify the use of a TSP for where a producer receives financial assistance, versus where a producer does not receive financial assistance.

*Response:* Program participants receive Farm Bill financial and technical assistance to implement their conservation practices. Program participants that would not receive Farm Bill financial assistance may also receive technical assistance from NRCS or a TSP. For example, if the program participant receives financial assistance from the State government or any other entity, they may also request technical assistance from NRCS to include TSP services. Because the rule accurately reflects when technical services may be acquired, no changes were made in response to this comment.

*Comment:* Two respondents recommended that the definition of technical service include work on maintenance of NRCS contracts.

*Response:* The scope does not include maintenance, since maintenance is a responsibility of the program participant under the terms of an operations and maintenance agreement, and such activities normally do not involve the need for technical assistance. TSPs provide technical assistance for design, layout, installation, and check-out of approved conservation practices. No changes were made in response to this comment.

*Comment:* One respondent recommended adding a definition for the term conservation plan tied to the planning requirements of each program under statute.

*Response:* The TSP regulation did not define the term conservation plan, and

NRCS agrees that a definition for conservation plan will clarify aspects regarding the delivery of technical services. However, NRCS does not believe that the definition requires being tied to the planning requirements for each program, as recommended by the respondent. NRCS conducts its conservation planning activities pursuant to the National Planning Procedures Handbook (NPPH). The term conservation plan is defined by the NPPH, and NRCS believes that it should use a definition consistent with its long-standing procedures. Therefore, a new definition to § 652.3, “Definitions” is added to read as follows: “*Conservation plan* means a record of the client’s decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets the Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and takes advantage of opportunities at a conservation management system level. The needs of the client, resources, and Federal, State, and local requirements will be met.”

### General Program Rules

NRCS received several comments on matters related to the general program. Topics included training, consultation with Indian tribes, and various issues related to the utilization of TSPs.

*Comment:* NRCS received comments from three respondents regarding the training of TSPs and recommended that a successful training program requires the involvement of both NRCS personnel and funding.

*Response:* The interim final rule clarified NRCS’ role regarding the training of TSPs. In particular, the interim final rule set forth the conditions and procedures by which NRCS may provide training to third party providers to assist them with meeting certification requirements. Section 652.3(c)(4) of the TSP regulations authorizes training for TSPs to ensure that persons meet the certification criteria for certain technical expertise. Consistent with its legal authorities, NRCS determined it is appropriate to limit its provision of training to matters particular to its practice standards, policies, and procedures.

*Comment:* One respondent requested that the rule clarify that consultation with tribes is required when NRCS funds off-reservation activities that

directly impact a treaty-reserved resource of the tribe.

*Response:* NRCS meets its consultation responsibilities with Indian tribes through adherence to the principles identified in Executive Order 13175. Executive Order 13175 specifies that the United States works with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. Each agency must ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. “Policies that have tribal implications” refers to actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No changes were made in response to this comment.

*Comment:* Two respondents recommended that NRCS focus TSP contracts and agreements on instances where: (1) TSPs will provide services at substantially less cost than NRCS; (2) NRCS does not have the critical skills needed; and (3) TSPs can help address critical resource needs.

*Response:* The State Conservationist in each State has the ability to increase the availability, range and scope of technical experts, and services depending on critical resource needs. TSPs are being utilized to further achieve the objectives of the agency in areas that would otherwise be limited by personnel shortages.

NRCS obtains technical or support services directly through procurement contracts, contribution agreements, cooperative agreements, or other instruments appropriate for obtaining technical assistance services. TSPs perform technical services in most aspects of conservation including conservation planning, design, layout, installation, and checkout of conservation practices. All work performed by TSPs must be done in accordance with agency practice standards and guidelines. No changes were made in response to these comments.

*Comment:* Two respondents recommend that NRCS incorporate conflict of interest provisions that prohibit TSPs from having a financial interest in products or services recommended by plans.

*Response:* No changes were made in response to this comment. When NRCS published the TSP final rule in November 2004, the agency indicated

that it had received nearly 157 comments on whether NRCS should incorporate a conflict of interest provision into the TSP rule. The NRCS response at that time was as follows: "This particular issue is not a regulatory issue appropriately addressed in this regulation, but is one that should be handled between the party who seeks technical services and the party who provides the technical services. This is not an ethics matter to which the Federal rules apply. Participants are prudent to adopt a "buyer-beware" approach in their business transactions, including who they decide to hire to provide them with technical services."

NRCS, in its own contracts or agreements with providers, incorporates provisions to address potential conflicts of interest that a provider may have. These clauses include particular restraints upon other arrangements the provider can enter while providing services under contract or agreement for NRCS. NRCS recommends that program participants similarly evaluate for themselves whether the TSPs they hire are providing fair and impartial recommendations, and make their own decisions regarding whether they should do business with a TSP who may have alternative motivations for providing advice.

*Comment:* One respondent recommended NRCS not provide a lower cost-share for participants using NRCS services than participants who obtain services from a TSP.

*Response:* The agency's policy and guidelines pertaining to the cost-share rates are the same regardless of whether a TSP or an NRCS employee developed the conservation plan.

*Comment:* One respondent recommended NRCS undertake initiatives to ensure it can meet new requirements to serve organic farmers and ranchers.

*Response:* NRCS embraces the opportunity to increase the nature and quality of the technical services it can provide to farmers and ranchers who utilize organic systems of production. For example, the TSP team is working with National Headquarters to establish a Memoranda of Understanding for outreach, training, and certification programs. Additionally, NRCS has allocated Environmental Quality Incentives Program (EQIP) funds for an Organic Initiative. The Conservation Stewardship Program (CSP) also addresses the needs of organic farmers and ranchers by identifying opportunities for enhancements related to organic production.

In addition to the EQIP Organic Initiative and CSP enhancements, NRCS

is evaluating its conservation practices to increase their applicability to organic and specialty crop systems. On June 12, 2009, NRCS published in the **Federal Register** a notice regarding the results of NRCS compliance with section 1242(h) of the Food Security Act of 1985, and to solicit public comment about how to improve agency conservation practice standards. The initial public comment period closed on August 11, 2009, but NRCS re-opened and extended the public comment period to September 14, 2009, to ensure the agency received comments from a broad segment of the agriculture sector.

*Comment:* One respondent recommended against providing funds for "cookie-cutter" plans or other services.

*Response:* TSPs are required to offer producers technical services that meet NRCS standards and specifications for the specific natural resource needs on a particular property. Payment rates reflect the complexity of the technical services to be provided.

#### Outreach

*Comment:* Two respondents suggested NRCS increase its outreach to smaller farm operators and non-industrial private landowners.

*Response:* Section 1244(a)(1) authorizes NRCS to provide incentives to beginning farmers, socially disadvantaged farmers, limited resource farmers, and Indian tribes. Under this authority, NRCS has established ranking pools through its conservation programs to encourage wider participation by historically underserved producers. No changes were made in response to this comment.

#### Payments

NRCS received 10 comments from 8 respondents regarding TSP payments.

*Comment:* One respondent indicated that regional consistency does not ensure or promote fair or reasonable payment rates, and NRCS should allow State Conservationists the flexibility to set payment rates.

*Response:* NRCS did not make any changes in response to this comment because there are already policies in place which allow for flexibility within reasonable limits. The State Conservationist retains the authority to establish individual rates for the local area, and National Headquarters reviews rates for consistency. NRCS is cognizant that where two States provide services to a common watershed or region, there should be consistency for payment rates for the same activity. National Headquarters can identify these differences and make recommendations

to States, but will not dictate that the rates be the same.

*Comment:* One respondent requested clarification regarding the type of circumstances that constituted unusual conditions or unforeseen circumstances that would justify a different payment rate. Three respondents requested clarification whether sensitive, endangered, or invasive species qualify as unusual conditions or unforeseen circumstances.

*Response:* Sensitive, endangered, or invasive species may be treated as unusual conditions consistent with other resource concerns. On a case-by-case basis, in response to unusual conditions or unforeseen circumstances such as set forth in § 652.5(m)(2)(v), NRCS may adjust payment rates to address the additional costs associated with the unusual conditions or unforeseen circumstances. No changes were made in response to these comments.

*Comment:* One respondent identified that it appears reference to "not to exceed rates" remains in the regulation and should be deleted.

*Response:* NRCS intended to delete § 652.5(k) in the interim final rule. Consequently, the references to "not to exceed rates" have been removed from the final rule. The provisions of § 652.5(k) regarding establishing payment rates were replaced by § 652.5(m) of the interim final rule. In this final rule, the provisions of § 652.5(m) now appears as § 652.5(l).

*Comment:* Two respondents recommend that NRCS consider the equity of providing different levels of assistance to competing producers and should use TSPs to promote whole-operation, multi-resource conservation planning, and planning that addresses highest resource priorities in an area.

*Response:* NRCS implements policy as recommended by the respondents. NRCS promotes whole operation, multi-resource conservation planning and planning that addresses the highest resources. Different levels of assistance only occur when there are differences in local cost share rates, a landowner qualifies as a historically underserved producer, or the project is only able to address one resource concern. No changes were made in response to this comment.

*Comment:* Three respondents proposed that States establish TSP payment rates which capture local market conditions and maintain flexibility. These respondents opposed setting payment rates solely for hard deliverables, expressing that this would impede conservation program delivery. The respondents offered that payments

based on the level of service will facilitate the acceleration of technical assistance.

*Response:* NRCS bases TSP payments on a per contract basis because each situation must be evaluated on the conservation needs for that situation. However, NRCS does not endorse establishing payment rates based solely on a set of deliverables for each situation. NRCS believes that the establishment of a per/unit rate allows for consistency in payment rates, while allowing contracts to vary based on conservation needs. No changes were made in response to these comments.

*Comment:* Several respondents commented upon the use of market data in the establishment of payment rates and the review of such rates by National Headquarters. In particular, one respondent recommended that NRCS evaluate the basis for differentials reflected in market data before importing data as the basis for TSP rates. Two respondents support use of common guidelines to ensure consistency, but want that process to allow variation among States. One respondent recommended NRCS undertake a comparison of overall TSP costs with internal costs for NRCS personnel. Two respondents requested NRCS review and approve State payment rates. Two individuals commented on the use of procurement data at § 652.5(m)(2)(ii), and cautioned that the use of procurement data should be monitored carefully. In particular, the use of procurement data should include all data related to a Request for Proposals or General Services Administrative procurement schedule. The respondents indicated that the use of procurement data from individual contracts and cooperative agreements with other agencies or non-governmental organizations are not representative of actual costs since these entities are often subsidized from other sources.

*Response:* Section 652.5(m)(2)(ii) of the TSP regulation indicates that the State Conservationist will establish TSP payment rates in each State for the various categories of technical services. State Conservationists determine the rates according to local NRCS cost data, procurement data, and market data, and have the authority to use any procurement (private or government) that is available within the State. NRCS does not wish to limit consideration to only certain forms of procurement.

While NRCS recognizes the potential disparity in cost information gleaned from various sources, procurement data is just one of three sources of data that the State is authorized to use in the

development of the payment rate for TSPs. States have the necessary flexibility to use a combination of all three or a single source based on best obtainable information.

National Headquarters 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, such as variations in topography, soil type, and the presence of cultural resources. No changes were made in response to these comments.

#### *Procurement*

*Comment:* One respondent recommended NRCS utilize all available data to assess the unmet need for technical services and training. Two respondents recommended that the Chief provide guidance for acceptable use of TSP funds, and that such funds should not be used to compensate for State budget shortfalls.

*Response:* The National Headquarters TSP team uses the Performance Results System (PRS) data and financial management reporting data to determine the unmet needs for technical services. NRCS has incorporated flexibility into the TSP provisions to allow State Conservationists the discretion to determine how to utilize TSPs to meet the technical service needs of the State. The funding for TSP services is not used for State USDA employee compensation. No changes were made in response to these comments.

#### *Socially Disadvantaged Producers*

*Comment:* One respondent recommended that NRCS assure that there are adequate numbers of staff to service needs of socially disadvantaged producers and beginning farmers and ranchers, and that the performance review system incorporates such. The respondent contends that because EQIP and CSP have targeted percents of financial assistance funding, that NRCS identify targeted percentage of technical assistance funding accordingly.

*Response:* Since financial assistance and technical assistance funds are allocated proportionally, the amount of funds available for technical services should correspond with the financial assistance levels allocated to socially disadvantaged producers and beginning farmer and ranchers. Therefore, NRCS has not established any targets for utilization of the technical assistance funds or TSP participation. No changes were made in response to this comment.

#### *Summary of Changes by Section*

NRCS confirms the changes made to the TSP regulations by the January 16, 2009, interim final rule except for minor adjustments to three sections as described below and explained in the preamble. Because the amendatory language used in the interim final rule has created confusion, NRCS is reprinting subpart A with the identified changes and corrections incorporated.

#### Section 652.1

In this final rule, NRCS modifies paragraph (b) to remove the limitation to “where there is a direct private land benefit” in response to recent amendments made to EQIP that expanded the availability of program funding to public lands that are part of a producer’s agricultural operation. NRCS also clarifies the types of activities that TSPs may provide to participants to include education and outreach, and assistance with design implementation.

#### Section 652.2

NRCS revises the definition of “technical services,” removes the redundant definition for “technical services,” and adds definitions for the terms “conservation plan” and “conservation activity plan.”

#### Section 652.5

NRCS removes the provisions that referenced “not-to-exceed” rates that were contained in § 652.5(k) of the interim final rule.

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

Natural resources, soil conservation, technical assistance, technical service, water resources.

■ For the reasons stated in this preamble, NRCS confirms as final, the interim rule published on January 16, 2009 (74 FR 2800) and further amends part 652 of Title 7 of the CFR 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. Part 652 is amended by revising Subpart A to read as follows:

#### **Subpart A—General Provisions**

Sec.

652.1 Applicability.

652.2 Definitions.

652.3 Administration.

652.4 Technical service standards.

652.5 Participant acquisition of technical services.

652.6 Department delivery of technical services.

652.7 Quality assurance.

### Subpart A—General Provisions

#### § 652.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers (TSPs). The Food Security Act of 1985, 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. This regulation defines how a participant acquires technical service from a third party TSP, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

(b) TSPs may provide technical services to eligible participants in conservation planning, education and outreach, and assistance with design and implementation of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land.

(c) The Chief may implement this part in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### § 652.2 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Approved list* means the list of individuals, private sector entities, or public agencies certified by the Natural Resources Conservation Service (NRCS) to provide technical services to a participant.

*Certification* means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

(2) An entity or public agency having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

*Chief* means the Chief of NRCS or designee.

*Conservation activity plan* means the conservation practices associated with plan development as authorized under the Food, Conservation, and Energy Act of 2008 (2008 Act).

*Conservation plan* means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process that meets the Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals), and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of opportunities at a conservation management system level. The needs of the client, the resources, and Federal, State, and local requirements will be met.

*Conservation practice* means a specified treatment, such as a structural or vegetative practice, or a land management practice that is planned and applied according to NRCS standards and specifications.

*Contribution agreement* means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

*Cooperative agreement* means the same as defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

*Department* means the NRCS, the Farm Service Agency, or any other agency or instrumentality of the Department of Agriculture (USDA) that is assigned responsibility for all or a part of a conservation program subject to this part.

*Eligible Participant* means a producer, landowner, or entity that 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.

*Entity* means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

*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 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 United States Government-owned land under the Bureau of Indian Affairs jurisdiction.

*Procurement contract* means the same as the term "contract" means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

*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, or the Agricultural Management Assistance Program, authorized under 7 U.S.C. 1524.

*Public agency* means a unit or subdivision of Federal, State, local, or tribal government other than the Department.

*Recommending organization* means a professional organization, association, licensing board, or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as TSPs for specific technical services.

*Secretary* means the Secretary of the Department of Agriculture.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Basin Area.

*Technical Service Contract* means a document that specifies the rights and obligations of an eligible participant to obtain technical services from a TSP 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 technical assistance provided by TSPs, including conservation planning; education and outreach; and the design, installation, and check-out of approved conservation practices.

*Technical service provider* means an individual, entity, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

*Written agreement* means the document that specifies the rights and obligations of any individual or entity



that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

#### **§ 652.3 Administration.**

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a TSP in accordance with the requirements of this part.

(b) The Chief of NRCS will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a TSP process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of TSPs and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of TSPs;

(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) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a TSP unless the TSP is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a TSP in this manner, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with

subpart B, nor identified on the approved list.

(f) When a participant acquires technical services from a TSP, the Department is not a party to the agreement between the participant and the TSP. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the TSP must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, TSPs are required to submit copies of all transcripts, licensing, and certification documentation.

#### **§ 652.4 Technical service standards.**

(a) All technical services provided by TSPs must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a TSP initiating technical services for those technologies and practices.

(c) A TSP must assume responsibility in writing for the particular technical services provided. Technical services provided by the TSP must:

(1) Comply with all applicable Federal, State, tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) TSPs are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or

written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a TSP.

(g) The TSP will report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or tribal law, TSPs may utilize the services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

#### **§ 652.5 Participant acquisition of technical services.**

(a) Participants may obtain technical assistance directly from the Department or, when available, from a TSP.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a TSP, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified TSP from the approved list of TSPs.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(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 TSP.

(g) The Department will identify in the particular program contract or written agreement the payment provisions for TSPs hired directly by the participant.

(h) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department will issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a TSP hired by the participant, or upon receipt of an assignment of payment from the participant, make payment directly to the TSP.

(i) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific TSPs.

(j) Payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(k) The Department will not make payment for activities or services that are customarily provided at no cost by a TSP to a participant as determined by the State Conservationist.

(l) 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) National Headquarters 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) National Headquarters and State 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.

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

(a) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.

(b) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument with TSPs 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.

(d) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a TSP through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B of this part nor identified on the approved list.

(e) The Department will implement procurement contracts, contribution agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate.

Any contract, contribution agreement, cooperative agreement, or other appropriate instrument entered into under this section will be for a minimum of one year, will not exceed 3 years in duration, and may be renewed upon mutual agreement of the parties.

(f) A TSP may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.

(g) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

#### **§ 652.7 Quality assurance.**

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by TSPs. As a requirement of certification, TSPs must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and provide this documentation to NRCS and the participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the TSP, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a TSP under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the TSP detailing the deficiency and requesting remedial action by the TSP. Failure by the TSP to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. TSPs are solely responsible for providing technical services that meet all NRCS standards and specifications.

Signed this 4th day of February, 2010, in Washington, DC.

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 2010-2814 Filed 2-11-10; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0613; Directorate Identifier 2009-NM-013-AD; Amendment 39-16195; AD 2010-04-02]

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Model A310-221, -222, -322, -324, and -325 Airplanes, and Model A300 B4-620, B4-622, B4-622R, and F4-622R Airplanes, Equipped With Pratt & Whitney PW4000 or JT9D-7R4 Series Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During the year 2000, life extension exercise programs were launched for Airbus A310 and A300-600 aircraft. Certification of Extended Service Goal (ESG) is based on analysis, except for fan cowl and thrust reverser (T/R) latches, which are always certified by tests.

\* \* \* testing of the T/R door centre latch has shown that this does not meet the requirements for ESG.

\* \* \* \* \*

The unsafe condition is possible failure of the T/R latch and detachment of the T/R from the airplane, which could result in structural damage and consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective March 19, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 19, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 16, 2009 (74 FR 34516). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the year 2000, life extension exercise programs were launched for Airbus A310 and A300-600 aircraft. Certification of Extended Service Goal (ESG) is based on analysis, except for fan cowl and thrust reverser (T/R) latches, which are always certified by tests.

Currently, the Airworthiness Limitation Item (ALI) task 54-50-28 for engine pylon T/R hinges requires inspection every 1,200 Flight Cycles (FC). An analysis performed by Airbus shows that forward and aft T/R door latches have been demonstrated successful for ESG, with inspection task every 1,200 FC. However, testing of the T/R door centre latch has shown that this does not meet the requirements for ESG.

For the reason described above, this EASA AD requires the replacement of the T/R centre latches with serialized latches on LH [left hand] and RH [right hand] engines and repetitive [detailed] inspections [for cracking] of the serialized latches. In addition, this AD introduces a life limit of 18,000 FC for the serialized centre latches.

The unsafe condition is possible failure of the T/R latch and detachment of the T/R from the airplane, which could result in structural damage and consequent reduced controllability of the airplane. The corrective action includes replacing the T/R latch if any surface crack is found during any inspection. You may obtain further information by examining the MCAI in the AD docket.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

##### **Support for the NPRM**

FedEx Express has no objections or comments on the content or technical details of the NPRM.

##### **Request To Reduce Applicability**

Airbus asks that Model A300 F4-605R airplanes be removed from the applicability specified in the NPRM. Airbus states that these airplanes are equipped with General Electric CF6-80C2A5 or CF6-80C2A5F engines.

We agree with Airbus for the reasons provided. The actions required by this AD are not applicable to Model A300 F4-605R airplanes and the MCAI does not refer to this model; therefore, we have removed that model from the applicability of this AD.

##### **Request To Add a Note**

Airbus also recommends that we include a note after paragraph (f)(2) of the NPRM that specifies that accomplishing ALI Task 54-50-28, which pertains to a detailed inspection of the engine cowl hinge fittings LH/RH, can be done when complying with the inspections required by paragraph (f)(2) of the AD.

We agree with the recommendation from Airbus. While not mandatory, performing the specified ALI task at the same time as the inspection required by paragraph (f)(2) of this AD would be of benefit to operators and would help to maintain an acceptable level of safety on the airplanes. We have added a new Note 1 to this AD (and renumbered subsequent notes) to include this recommendation.

##### **Explanation of Clarification Made to the Service Bulletin References**

In paragraph (f)(2) of the NPRM, we refer to Airbus Mandatory Service Bulletins A300-78-6029 and A310-78-2030, both including Appendix 1, both dated October 3, 2008, as the appropriate sources of service information for doing the inspection. However, the Accomplishment Instructions of those service bulletins do not contain procedures for doing the inspection, and the Pratt & Whitney service bulletins that contain the inspection procedures are referred to only in the Reason section of the Airbus service bulletins. Therefore, for clarification, we have referenced Pratt & Whitney Service Bulletins PW4NAC 78-113 and PW7R4 78-182, both dated August 15, 2005; in paragraph (f)(2) of this AD as the appropriate sources of service information for doing the inspection.

##### **Explanation of Clarification Made to the NPRM**

We have clarified the inspection requirement contained in the NPRM. Whereas the NPRM specifies an "inspection," we have revised this AD to