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**Wyoming Association of Conservation Districts**  
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January 19, 2009

*Via Electronic Mail*

Director, Financial Assistance Program Division  
Natural Resources Conservation Service  
AMA Program Comments  
PO Box 2890, Room 5237-S  
Washington, DC 20013

**Re: *Comments on the Agriculture Management Assistance Program; 7 CFR Part 1465; FR Notice 11/20/08***

Dear Sir/Madam,

On behalf of the Wyoming Association of Conservation Districts, representing Wyoming's 34 local conservation districts, local political subdivisions of state government, we appreciate the opportunity to provide comment and suggestion on the above referenced interim final rule. Wyoming is an eligible state and subsequently the producers and districts are directly impacted by the final implementation rules.

Wyoming's allocation was \$1.051 million in FY 08 and these funds were utilized to fund 68 contracts in five counties in the state.

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**§ 1465.3 Definitions.** *Resource concern* means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by producers.

**COMMENT:**

**It is understood that the intent of the AMA program is to provide assistance to producers in states where there has been historically low participation in crop insurance programs. It is our understanding that the program is intended to provide risk management assistance to producers. Further, based upon a review of the statutory language outlining the types of conservation measures to be funded via AMA program, which include the following:**

- Construction or improvement of watershed management structures; irrigation structures;**
- Plant trees to form windbreaks or to improve water quality;**

**Mitigate financial risk through production or marketing diversification or resource - conservation practices, including soil erosion control; integrated pest management; organic farming**

**WACD understands the agency intent is to provide consistency between definitions in the various programs administered however there is a slightly different objective to the AMA program compared to the traditional Farm bill authorized conservation programs in that risk management is the primary intent. In light, WACD would suggest that either in the definition or elsewhere in the rule, this objective be reflected.**

**§ 1465.4 National priorities.**

- (a) The Chief, with advice from State Conservationists, will identify national priorities to achieve the conservation objectives of AMA.
- (b) National priorities will be used to guide annual funding allocations to States.
- (c) State Conservationists will use national priorities in conjunction with State and local priorities to prioritize and select AMA applications for funding.
- (d) NRCS will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local level to adapt the program to address emerging resource issues.

**COMMENT: Based upon a review of the explanation provided on page 70249, WACD understands that the reference to the State Technical Committees role in providing advice on priorities and practices is being eliminated since this program is actually authorized by the Federal Crop Insurance Act versus the Farm Bill. From a legal aspect, WACD would concur. From a practical standpoint, WACD would still like to see local input included in the State Conservationist's establishment of priorities. Although it is implied above that some consideration and input would be sought, WACD would suggest that it be clarified with the suggested language: "State Conservationists shall seek input from state conservation agency and local conservation districts for consideration in establishing state and local priorities. State Conservationists will use national priorities in conjunction with State and local priorities to rank and select AMA applications for funding.**

**Page 70254 § 1465.5 Program requirements.**

- (a) Participation in AMA is voluntary. The participant, in cooperation with the local conservation district, applies for
  - (d) Land may only be considered for enrollment in AMA if NRCS determines that the land is:
    - (1) Privately owned land;
    - (2) Publicly owned land where:
      - (i) The land is a working component of the participant's agricultural and forestry operation; and
      - (ii) The participant has control of the land for the term of the contract; and
      - (iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern that is on private land; or

**COMMENT: WACD supports the inclusion of publicly owned land in the eligibility determinations. In states that have a predominance of public lands, such as Wyoming, it is**

**imperative that a producer's entire operation, which often includes public land leases, be eligible.**

#### **Subpart B—Contracts**

##### **§ 1465.20 Applications for participation and selecting applications for contracting.**

(a) Any producer who has eligible land may submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance, national priorities, and the State-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist will develop ranking criteria and a ranking process to select applications, taking into account national, State, Tribal, and local priorities.

(d) The State Conservationist or designated conservationist using a locally led process will evaluate, rank and select applications for contracting based on the State-developed ranking criteria and ranking process.

**COMMENT: WACD supports the approach of seeking and considering local priorities and input when determining the statewide priorities for the allocation of AMA funds. Absent the State Technical committee process, WACD would suggest that some language be included that requires consultation with the state conservation agency and the local conservation districts to ensure that the appropriate legal entities have some means of providing input into the state developed ranking criteria.**

##### **§ 1465.23 Payments.**

(a) The Federal share of payments to a participant will be:

(1) Up to 75 percent of the estimated incurred cost or 100 percent of the estimated income foregone of an eligible practice, except as provided in paragraph (a)(2) of this section.

**COMMENT: WACD supports the language allowing 75 percent payment of cost and 100 percent of forgone income rather than the flat rate of 75 percent.**

**§ 1465.24 Contract modifications, extensions, and transfers of land.** (f) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the conservation practice, at the rates established in accordance with § 1465.23, provided such payments do not exceed the payment limitation requirements as set forth in § 1465.23.

**COMMENT: WACD supports this addition to ensure that authorization exists to address failing practices.**

##### **§ 1465.25 Contract violations and termination decisions**

NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships

beyond the participant's control that have prevented compliance with the contract. If the participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) The participant may voluntarily terminate a contract if NRCS agrees based on NRCS's determination that termination is in the public interest.

(iii) In carrying out NRCS's role in this section, NRCS may consult with the local conservation district.

**COMMENT: WACD supports the provision that recognizes hardships that may be beyond the participant's control, however questions the subjectivity of "well documented". WACD suggests language clarifying or further defining what type and extent of documentation may be necessary to demonstrate hardship claims.**

**Page 70256 § 1465.32 Access to operating unit.**

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of determining eligibility and for ascertaining the accuracy of any representations related to contracts and performance. Access shall include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the contracts, including the APO and O&M agreement; and collect information necessary to evaluate the conservation practice performance as specified in the contracts. The NRCS representative shall make an effort to contact the participant prior to exercising this provision.

**COMMENT: WACD supports the requirement that attempts to contact participant prior to exercising access authority. This is important to maintaining the positive working relationship between the agency and the producer. WACD recommends that if this provision is not already included in the APO that is signed by the participant, that it be included.**

**§ 1465.33 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 action or advice was improper or erroneous, the State Conservationist may grant relief to the extent it is deemed appropriate by NRCS. 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 part 635.

(b) The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(c) If, during the term of an AMA contract, a participant has been found in violation of a provision of the contract, 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 part 635.

**COMMENT: WACD supports the clarification of the applicability of the equitable relief authorities. Although it may be limited in nature, there are situations in which producers may have relied on faulty information and this authority is imperative to rectifying those instances.**

Again, WACD appreciates the opportunity to comment on the interim Agriculture Management Assistance rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph Brokaw', with a stylized flourish at the end.

Ralph Brokaw  
President

Cc: Wyoming Department of Agriculture  
Wyoming Agriculture organizations  
Wyoming's Conservation Districts