

Comments of Environmental Defense Fund on the Interim Final Rule Governing State Technical Committees (Docket # NRCS-IFR-08010)

On behalf of its more than 500,000 members, Environmental Defense Fund (EDF) appreciates the opportunity to comment on the interim final rule implementing Section 2711 of the 2008 farm bill (related to the establishment and responsibilities of State Technical Committees).

As noted in the preamble to the interim final rule, Section 2711 requires the U.S. Department of Agriculture (USDA) to standardize the operations of State Technical Committees (STCs) and to ensure agricultural producers and private forest landowners are represented on STCs. Section 2711 also clarifies that Local Work Groups are to be considered subcommittees of STCs, and that STCs are responsible for ensuring Local Work Groups are addressing priorities and criteria established at the state level for the conservation programs USDA administers.

Composition

Section 2711 changed the first sentence of Section 1261(c) of the Food Security Act of 1985 (16 U.S.C. 3861(c)) to read: “Each State technical committee shall be composed of agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences.” This sentence previously read: “Each state technical committee . . . shall be composed of professional resource managers that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences.” While Section 2711 modifies the list of agency personnel and others specifically required to be included, it does not alter the general instruction to the Secretary to include on the STC a range of professionals representing “a variety of disciplines in the soil, water, wetland, and wildlife sciences.” Nor does Section 2711 limit the agency’s discretion to require or encourage state NRCS offices to ensure that STCs include representatives of agencies and others not specifically listed. On the contrary, the Statement of Managers accompanying Section 2711 states that “the Managers expect that other relevant Federal agencies will also be invited to participate as needed.”

In light of this language, we believe the interim final rule provisions dealing with the composition of STCs could cause NRCS state conservationists to be more restrictive regarding participation than Congress intended. Specifically, while the rule includes the general requirement that STCs include “professionals who represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences,” the list of specific individuals the agency is required to include no longer contains representatives from the U.S. EPA, U.S. Geological Survey, U.S. Fish and Wildlife Service, and other federal agencies with expertise relating to the condition of natural resources, despite the fact that the agency clearly retains the discretion to require the inclusion of representatives from these agencies. In addition, the rule drops the catch-all provision currently included at 7

CFR § 610.22(a)(16).¹ Instead, the rule incorporates the language from the Statement of Managers into 7 CFR § 610.22(b): “The State Conservationist will invite other relevant Federal agencies, and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate as needed.” It is not clear whether this provision requires state conservationists to include these other agencies and individuals and if it does, under what circumstances.

In addition, while the interim final rule now lists among the required participants in STCs set out in 7 CFR § 610.22(a) “Nonprofit organizations, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, with demonstrable conservation expertise and experience working with agricultural producers in the State,” it has dropped the reference in §610.22(b) to nonprofit organizations that simply have “demonstrable conservation expertise.”

In order to ensure that STCs include participants with the full range of expertise suggested by the first sentence of Section 1261(c), as amended by Section 2711 of the farm bill, we urge you to modify §610.22(b) to read as follows:

“The State Conservationist shall invite Federal agencies with expertise in soil, water, wetlands, plant, and wildlife management; nonprofit organizations with demonstrable conservation expertise; and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate, in order to ensure that the state technical committee can provide scientifically sound recommendations to the State Conservationist concerning effective implementation of conservation programs to address conservation priorities in the State.”

We also note that the interim final rule deletes the phrase “if willing to serve” preceding the list of required agency representatives and others in 7 CFR § 610.22(a). While NRCS can and should encourage broad participation from individuals with the expertise needed to ensure that conservation programs are implemented in a way that produces the greatest environmental benefits, we also believe that it is important that the rule is clear that the work of STCs will continue even if some required representatives choose not to participate regularly. We therefore suggest adding language clarifying this issue.

Standard Operating Procedures

The preamble to the interim final rule invites comments on the content of the standard operating procedures that Section 2711 requires NRCS to develop. While specific procedures will be incorporated into directives published later, the interim final rule lists some items that the procedures will outline, including specific items such as how to publish meeting notices, but also more generally “the best practice approach to

¹ 7 CFR § 610.22(a)(16) currently requires NRCS to include “other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.”

establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups.” (See §610.23(b).) Standard operating procedures should make clear that “effectively utilizing State Technical Committees” means using the expertise of its members, including specifically the expertise of scientists and other personnel of state and federal natural resource agencies, to identify the most significant environmental challenges associated with agricultural production in various areas within the state and what management or other activities can and should be undertaken by producers in those areas to help meet those challenges. Standard operating procedures should make clear that STCs are to assist the state conservationist in targeting conservation program resources in a manner that ensures the programs are effective in helping farmers, ranchers and private forest landowners produce significant environmental benefits for the public.

Local Work Groups

The preamble to the interim final rule invites comments on the issue of the interaction of Local Working Groups with STCs and with NRCS at both the local and state levels, and on the issue of STC review of Local Working Groups to make sure they are addressing priorities established by STCs.

As suggested above, it is critical for NRCS ensure, at the state level, that conservation program resources are being used strategically and effectively to address the most significant environmental challenges associated with agricultural production in each part of the state. Because of the role of Local Working Groups in providing recommendations on local natural resource priorities and in many cases establishing criteria for selecting local participants in conservation programs, it is important for NRCS to determine at the state level, with the advice of the STC, whether these decisions are consistent with state priorities.

The interim final rule requires subcommittees of the STC assembled to deal with specific issues to provide any recommendations they develop to the STC in a general session where the public is notified and invited to attend, but does not impose the same requirement on Local Working Groups. (See 7 CFR § 610.25(a).) So while § 610.24(c) requires STCs to review whether Local Working Groups are addressing state priorities, the interim final rule does not spell out a mechanism to allow the STC to do that. Instead, the rule requires Local Working Groups to “follow the standard operating procedures described in § 610.23(b).”

Standard operating procedures for Local Working Groups should provide the STC an opportunity to review priorities established by Local Working Groups and to suggest any changes that may be needed in order to leverage the benefits of conservation program resources to address environmental issues that cross county or other local boundaries and are of significant concern in the state as a whole. In addition, these procedures must also make clear that these Local Working Groups need to include members with the expertise needed to identify the most significant environmental challenges associated

with agricultural production in the local area and the conservation activities that will address these challenges in the most comprehensive and cost-effective way. Standard operating procedures should therefore require NRCS in each state to ensure through outreach and other means that participation in Local Working Groups is broad and includes state and federal agency personnel and other members with the appropriate scientific and technical expertise.

Thank you for considering our comments as you develop the final rule implementing Section 2711. Please feel free to contact Sara Hopper (shopper@edf.org; 202-572-3379) or Britt Lundgren (blundgren@edf.org; 202-572-3394) with any questions.