

National Sustainable Agriculture Coalition

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Lillian Woods, Acting Director
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USDA Natural Resources Conservation Service
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Room 6015-S
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Submitted through: <http://regulations.gov> (with additional e-mail copy to SIC2008@wdc.usda.gov ATTN: State Technical Committees).

RE: Docket Number NRCS-IFR-08010 // Comments on Interim Final Rule for State Technical Committees, Federal Register vol. 73 at pp. 71521-71526 (Nov. 25, 2008).

Dear Acting Director Woods:

I am submitting these comments on behalf of the National Sustainable Agriculture Coalition (NSAC) on the Interim Final Rule for changes to the NRCS State Technical Committee regulation mandated by Section 2711 of the Food, Conservation and Energy Act of 2008. NSAC represents family farm, rural, and conservation organizations from around the U.S. which share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities. Representatives from many of our member organizations participate on NRCS State Technical Committees.

NATIONAL SUSTAINABLE AGRICULTURE COALITION COMMENTS

Our comments will track the order of the sections of the interim rule.

1. Recommendations on State Technical Committee Membership, 7 CFR § 610.22.

(a) NSAC recommends that NRCS revise 7 CFR § 610.22(a)(8) so that beginning farmers and ranchers, socially disadvantaged farmers and ranchers, organic producers, specialty crop producers, bioenergy crop producers, and crop farmers utilizing resource-conserving crop rotations and other sustainable agriculture systems are actively encouraged to participate on State Technical Committees. Prior to issuing a final rule, we recommend NRCS issue guidance to the state offices to this effect.

The 2008 Farm Bill includes numerous conservation title provisions to improve access and services for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, organic producers, specialty crop producers, bioenergy crop producers, and crop farmers utilizing resource-conserving crop rotations. In addition to the revision to the SIC rule that membership include agricultural producers "representing the variety of crops and livestock or poultry raised within the State" incorporated into the IFR, we urge that the final rule also

encourage representation from the full range and diversity of producers, including traditional underserved sectors such as beginning, minority farmers and farmers using sustainable or organic systems. Given this new statutory emphases noted above, NRCS State Conservationists should be directed to reach out to these farmers and ranchers.

We recommend that NRCS revise 7 CFR § 610.22(a)(8) to read as follows:

“(8) Agricultural producers representing the variety of crops and livestock or poultry raised within the State and the full range and diversity of producers, including beginning and socially disadvantaged farmers and ranchers, farmers and ranchers using sustainable or organic production systems, producers using resource-conserving crop rotations, bioenergy crop producers, and specialty crop growers.”

(b) NSAC recommends that NRCS revise 7 CFR § 610.22(a)(10) to explicitly include non-profit organizations with expertise reaching beginning and socially disadvantaged farmers and ranchers and expertise in sustainable and organic production systems, managed rotational grazing, energy conservation and bioenergy crop production, the establishment of pollinator habitat, and wildlife habitat and biodiversity. Prior to issuing a final rule, we recommend NRCS issue guidance to the state offices to this effect.

NRCS State Conservationists will likely need assistance from those with expertise in implementing the new statutory mandates for beginning and socially disadvantaged farmers and ranchers, organic production systems, specialty crops, resource-conserving crop rotations, bioenergy production and energy conservation, and establishing pollinator habitat, as well as existing mandates for intensively managed grazing and other pasture based systems. We recommend that NRCS ensure that such organizations be encouraged to participate, even where such groups may not have been traditionally defined as “non-profits with conservation expertise.”

It is critical for the STC rule and for STC outreach materials to be explicit about this to actively combat exclusion and discrimination and to ensure that the conservation agencies have access to the full range of expertise necessary to implement the new farm bill provisions. NRCS should direct NRCS State Conservationists in all states to reach out to nonprofit organizations with such expertise and invite their participation on the NRCS State Technical Committees and subcommittees including the Local Working Groups.

We recommend that NRCS revise 7 CFR § 610.22(a)(10) to read as follows:

“(10) Nonprofit organizations, within the meaning of section 501(c)(3) of the Internal Revenue Cod of 1986, with demonstrable conservation expertise, including expertise in sustainable and organic production systems, resource-conserving crop rotations, bioenergy production and energy conservation, pollinator habitat, pasture-based systems, and wildlife habitat and biodiversity. and experience working with agriculture producers in the State, including beginning and socially disadvantaged farmers and specialty crop growers”

(c) NSAC recommends that NRCS revise 7 CFR § 610.22(a) to provide that NRCS State Conservationists may invite representatives from any relevant Federal or State agency, as well as the private sector, with expertise and information on issues before the State Technical Committee to participate on the Committee and subcommittees of the Committee.

NRCS states in the preamble to the regulation that the list of participants in 7 CFR § 610.22(a) is not exhaustive and that NRCS State Conservationists may invite representatives from Federal and State agencies and the private sector with expertise to participate on State Technical Committees. The preamble lists some of these potential invited participants, including representatives from the US EPA, USDA Rural Development, the U.S. Geological Survey, the Bureau of Reclamation, the Army Corps of Engineers and the state coastal zone management agency. The Managers Statement of the Conference Report of the 2008 Farm Bill at p. 744 states that the Managers expect that other federal agencies will be invited to participate “as needed.”

NSAC recommends that NRCS revise § 610.22(a) by adding a general provision to make clear that the list in the regulation is not exhaustive and that NRCS State Conservationists may invite the other participants as needed. The expertise of agencies such as the US EPA and the U.S. Geological Survey, which undertake environmental monitoring and other relevant activities, can be valuable in discussion of natural resource concerns and other issues before the State Technical Committee.

We recommend that NRCS revise 7 CFR § 610.22(a) by inserting a new (6) to read as follows (and then renumbering (6) through (11) as (7) through (12)):

“(6) Other federal agencies with relevant expertise.”

(d) NSAC recommends that NRCS revise 7 CFR § 610.22(d) to require that if an NRCS State Conservationist rejects an application for participation on a State Technical Committee or Subcommittee, including a Local Working Group, the applicant be informed of the grounds for rejection.

NSAC appreciates the need for NRCS State Conservationists to have the discretion to ensure that applicants for participation in State Technical Committees, and subcommittees including the Local Working Groups, meet the statutory and regulatory requirements for participation. But in the interest of the new hallmarks of transparency and open government, we recommend that the regulation be revised to require that if an applicant is rejected, the State Conservationist inform the applicant of the specific grounds for rejection.

We recommend that NRCS revise 7 CFR 610.22(d) by adding at the end thereof the following:

“If the State Conservationist rejects an application for participation on the State Technical Committee or a Subcommittee of the State Technical Committee (including a Local Working Group), the State Conservationist shall inform the applicant of the specific grounds for rejection within 60 days of receipt of the application.”

2. Recommendations on State Technical Committee Meetings. 7 CFR § 610.23.

(a) NSAC recommends the following measures for inclusion in the standard operations procedures for State Technical Committees and Local Working Groups:

(1) NRCS State Conservationists should establish a webpage for the State Technical Committees and subcommittees, including the Local Working Groups, which includes:

- a. the membership list for the STC and subcommittees, including the Local Working Groups, with the name and affiliation of the members;**
- b. meeting announcements and the proposed agenda for meetings of the STC and the subcommittees, including the Local Working Groups;**
- c. the minutes of the meetings of the STC and subcommittees, including the Local Working Groups; and**
- d. the determination of the NRCS State Conservationist as to the disposition of all recommendations made by the STC and the subcommittees, including the Local Working Groups.**

NSAC supported the statutory provision which excludes the NRCS State Technical Committees from the Federal Advisory Committee Act (FACA) and the 2008 Farm Bill provision which effectively makes Local Working Groups FACA-exempt subcommittees of the State Technical Committees. We gave this support because unlike many other FACA committees, NRCS State Technical Committees are standing advisory committees whose operations could be significantly impeded by compliance with all of FACA's administrative requirements. We also supported including Local Working Groups as State Technical Subcommittees exempt from FACA to ensure that non-profits, individual farmers and ranchers, and other private entities with conservation expertise and other expertise could participate in Local Working Groups.

Even though we support exemption from FACA requirements, NSAC also strongly supported the standard operating procedures measure that will ensure that State Technical Committees and subcommittees, including Local Working Groups, operate with transparency and that their proceedings are open to the public. These advisory bodies can influence important decisions about the use of millions of public dollars which have significant impacts on farmers and ranchers, rural communities, and the nation's natural resources. All NRCS State Conservationists have access to the web-based technology to provide the public with the minimum information needed to assure public accountability and transparency regarding the actions of NRCS State Technical Committees and Local Working Groups.

(b) NSAC recommends that NRCS allow NRCS State Conservationists the discretion to take additional transparency and accountability steps beyond the national standard operation procedures governing the operation of State Technical Committees and Local Working Groups.

Some NRCS State Conservationists already distribute information on State Technical Committee and subcommittee meetings, including agendas and minutes, by email to interested parties. We recommend that NRCS give the State Conservationists flexibility to go beyond the national standard operating procedures to communicate with farmers and ranchers and the general public. State Conservationists can act as “incubators” for new ideas and approaches to delivering information about farm bill conservation program implementation.

(c) NSAC recommends that rather than issuing a final decision on standard operating procedures in the Federal Register, NRCS issue a notice of proposed standard operating procedures with a 30-day public comment period before finalizing procedures.

NSAC understands that NRCS may not wish to have the State Technical Committee standard operating procedures be federal regulations, subject to the requirements of the Administrative Procedures Act. But we recommend that NRCS allow public comment on proposed standard operating procedures before finalizing them. This comment period can allow STC and Local Working Group participants, farmers and ranchers, rural residents, non-profits and others to respond to NRCS with information on the most effective ways to communicate with them. It may also alert NRCS to the need for regional differences for operating procedures. This is particularly important for Local Working Groups whose membership categories have been greatly expanded by the 2008 Farm Bill.

(d) NSAC recommends that the public notice of the State Technical Committee meetings include the proposed agenda and the links to any relevant documents that may be available on the web. We further recommend that, unless there are exceptional conditions that prevent it, members of the State Technical Committee and subcommittees, including Local Working Groups, be provided with any documents which will be under discussion at least 14 days before the meeting.

3. Recommendations on Responsibilities of State Technical Committees. 7 CFR § 610.24(a).

(a) NSAC recommends that the Cooperative Conservation Partnership Initiative be added to the list of conservation activities and programs provided in 7 CFR § 610.24(a).

Section 2707 of the 2008 Farm Bill amended the Cooperative Conservation Partnership Initiative (CCPI) to require that 90 percent of the funds and acres reserved in a fiscal year for the Initiative be allocated by the Secretary to projects based on the direction of NRCS State Conservationists, *with the advice of State Technical Committees*. Therefore, we are baffled by the omission of the CCPI from the list of programs for which State Technical Committees have advisory responsibilities. Although the NRCS State Conservationists have ultimate authority to select projects for CCPI participation, there are many determinations that are within the general advisory responsibilities of the State Technical Committee. In addition, the CCPI involves partnerships and collaborations among NRCS, farmers and ranchers, and the types of organizations which will be members of State Technical Committees. We realize that NRCS is developing more detailed provisions to implement the CCPI, which may include a role for the

State Technical Committee. However, the CCPI should likewise be included in the general provision for State Technical Committee responsibilities.

(b) NSAC recommends that highly erodible land conservation and wetland conservation (sodbuster, conservation compliance, and swampbuster) be added to the list of conservation activities and programs provided in 7 CFR § 610.24(a).

Like CCPI, this appears to be another oversight in the formulation of the IFR. Sodbuster, conservation compliance, and swampbuster all clearly fall within the conservation title and hence are relevant to the charge of the STC. We strongly urge that these be added to the list in §610.24(a).

(c) NSAC recommends that interim conservation practice standard creation and revision be added to the list of recommendations to be made by the STC in addition to the ones listed in (a)(1)-(3) in 7 CFR § 610.24, including conservation practice standards for specialty crops, organic production, precision agriculture, energy conservation and bioenergy production, native and managed pollinators, and forestry.

Section 2706 of the 2008 Farm Bill requires that USDA to review existing conservation practice standards to ensure completeness and relevance to local needs, including needs for specialty crops, native and managed pollinators, bioenergy crop production, and forestry. The section further directs USDA to ensure that there is an appropriate range of conservation practices and resource mitigation measures available to specialty crop and organic crop producers and that conservation practice standards incorporate specialty crops, organic agriculture, and precision agriculture. This major undertaking would benefit from advice from the State Technical Committee and it therefore should be included in the 610.24(a) list as a new (4).

(d) NSAC recommends that subprogram allocation decisions be added to the list of recommendations to be made by the STC in addition to the ones listed in (a)(1)-(3) in 7 CFR § 610.24.

Some of the most important decisions regarding the implementation of federal farm bill conservation programs are made in allocating resources within particular programs within the state. These are often as or more important decisions than criteria used in ranking or prioritizing applications. It is very important, therefore, that in-state allocation decisions be specifically added to the list of areas for STC advisory recommendations as a new (5).

(e) NSAC recommends that special conservation partnerships and projects under CCPI, CIG, and AWEP be added to the list of recommendations to be made by the STC in addition to the ones listed in (a)(1)-(3) in 7 CFR § 610.24.

Participants in State Technical Committees will in many cases be precisely the representatives from agencies and organizations that can help make special innovative project-based conservation a success. With respect to CIG and AWEP, STC consideration could help stimulate the development of competitive programs at the national level. With respect to CCPI, where the

disposition of 90 percent of the funding will be determined on the state level, STC participation in an advisory role is even more critical to the success of the initiative. Project-based conservation delivery, including under these three special initiatives, should be added to the list of areas for STC advisory recommendations as a new (6).

(f) NSAC recommends that 7 CFR § 610.24(b) include the responsibility of the NRCS or other USDA agency receiving advice or recommendations from the State Technical Committees to provide a written basis for rejecting recommendations.

Members of State Technical Committees give generously of their time and expertise and make a good faith effort to provide sound recommendations on implementation of farm bill conservation programs. NSAC understands that NRCS is not required to take this advice. As a matter of good government, accountability and sound public policy, however, we recommend that the regulations provide that when an NRCS State Conservationist rejects a recommendation of the State Technical Committee, the State Conservationist provide a written statement of the grounds for the rejection in communications back to the STC. We have had calls from many frustrated STC members who are not told if STC recommendations are accepted or rejected or why STC recommendations are accepted or rejected.

4. Recommendations on Subcommittees and Local Working Groups. 7 CFR § 610.24(a).

(a) NSAC recommends that § 610.24 be extensively rewritten prior to issuing the final rule. The rewrite should include a clear description of the membership and meetings of STC subcommittees, including but not limited to Local Working Groups, and should include a clear and comprehensive description of the responsibilities of Local Working Groups.

Unlike the other sections of the IFR which in our view need specific revisions or additions here and there, this final section of the IFR needs a complete overhaul. The presentation is unclear, contradictory, incomplete, and confusing. It deserves to go back to the drawing board. In rewriting this section, we recommend that the same headings for the IFR as a whole – membership, meetings, and responsibilities – be applied as well to subcommittees and Local Working Groups. The additional comments on this section that follow are only a partial rendering of the overall changes that need to be made to untangle and clarify the rule with respect to subcommittees and Local Working Groups.

(b) NSAC recommends that NRCS revise 7 CFR § 610.25(b), and in the interim before issuing the final rule issue more immediate guidance, to direct NRCS State Conservationists to include non-profit organizations to participate on Local Working Groups. Local Working Group participation must now, as a matter of law, be open to the same membership as the STC itself.

Section 2711 of the 2008 Farm Bill provides that Local Working Groups are subcommittees of the State Technical Committee. The STC Interim Final Rule charges the local working groups with providing recommendations on local natural resource priorities and criteria for conservation activities and programs. The composition of Local Working Groups at 7 CFR § 610.25(b),

however, conspicuously omits representatives from non-profit organizations, even though non-profits are specifically included in the statutory list of STC participants provided in the 2008 Farm Bill.

Section 2711 of the 2008 Farm Bill explicitly includes non-profits with demonstrable conservation expertise and experience in working with agricultural producers in the state as participants on NRCS State Technical Committees. There is no provision in Section 2711 authorizing the omission of non-profits from Local Working Groups. Indeed, the primary purpose of establishing the Local Working Groups as subcommittees of the State Technical Committees was to ensure that NRCS could take advice from a wide range of individuals, institutions and organizations with conservation expertise who are working on critical natural resource issues relevant to agriculture. Many non-profits work with farmers and ranchers to provide conservation information or in partnership on conservation projects.

There are a great many examples of non-profits around the country which work on the local level with farmers and ranchers to monitor and improve the conservation performance of their operations. These non-profit organizations can bring critical information about local natural resources and effective agricultural conservation systems and practices to the table during Local Working Group meetings.

In addition, as we discuss above in Section 1(b) of these comments, many non-profits also have expertise and information which NRCS State Conservationists will need in order to effectively implement statutory mandates to assist organic farmers and ranchers and farmers and ranchers who wish to establish intensively organic production systems, managed rotational grazing systems, resource conserving crop rotations and other sustainable agriculture systems. Local Working Groups will be unable to undertake their responsibilities effectively without access to this non-profit expertise and information on these systems and the role of these systems in improving the conservation and environmental performance of farms and ranches in relation to local natural resources.

(c) NSAC recommends that in 7 CFR § 610.25, NRCS clarify the role of the Local Working Groups relative the role of the State Technical Committee by requiring that all subcommittee meetings, including Local Working Group meetings, be open to the public; by requiring that recommendations of Local Working Groups, as summarized by the State Conservationist, be reviewed in open session by the State Technical Committees; and by giving State Technical Committees authority to review Local Working Group recommendations beyond the issue of whether the Local Working Groups are addressing state priorities.

The Interim Final Rule for the State Technical Committees is not clear about the role of the Local Working Groups, which under the 2008 Farm Bill are now subcommittees of the State Technical Committee. Prior to enactment of the 2008 Farm Bill, State Technical Committee participants in some states reported to NSAC that recommendations made on key conservation program issues within the authority of the State Technical Committee were rejected by State Conservationists on the grounds that the decisions had already been made by the Local Working

Groups. Among the decisions were key funding decisions such as the criteria for ranking program applications.

The Interim Final Rule appears to continue this pre-emption of State Technical Committee recommendations by Local Working Group decisions in a manner that does not hold Local Working Groups publicly accountable. In 7 CFR § 610.25(a), recommendations from Local Working Groups are the only subcommittee recommendations that do not have to be made in a general session of the State Technical Committee where the public is notified and invited to attend. Moreover, the regulation also allows Local Working Groups to hold closed meetings. In addition, 7 CFR § 610.24 (c) appears to limit State Technical Committees to a review of whether Local Working Group recommendations are “. . . addressing State priorities ”

NSAC believes that Local Working Groups make a valuable contribution to NRCS decision making and we will be encouraging our members to participate on Local Working Groups. But we also recommend that NRCS ensure that the recommendations of Local Working Groups are subject to the review by the State Technical Committee and the public at large. To be effective, farm conservation programs at the state level should have a comprehensive review by the State Technical Committee.

Thank you for considering our recommendations for amendment to the interim final rule as well as our recommendations for areas in need of immediate additional guidance to the state and local offices.

Sincerely,

Martha L. Noble

Martha L. Noble, Senior Policy Associate