

Proposed Rules

Federal Register

Vol. 74, No. 65

Tuesday, April 7, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 610

State Technical Committees

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Standard operating procedures for State Technical Committees.

SUMMARY: Section 1261(b)(1) of the Food Security Act of 1985, as amended by the Food, Conservation, and Energy Act of 2008 (2008 Act) requires the Secretary of Agriculture to develop standard operating procedures to standardize the operations of State Technical Committees. NRCS published an interim final rule for State Technical Committees, 7 CFR part 610, in the *Federal Register* on November 25, 2008, that states NRCS will incorporate standard operating procedures for State Technical Committees into its directives system and provide public notice of those procedures. NRCS seeks public comment on this document that includes the current NRCS standard operating procedures as set forth in the NRCS directives system.

DATES: *Comment Date:* Submit comments on or before June 8, 2009.

ADDRESSES: You may send comments using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://regulations.gov> and follow the instructions for sending comments electronically.

- *Mail:* Conservation Technical Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250-2890.

- *Fax:* (202) 720-2998
- *Hand Delivery:* Room 6015 of the USDA South Office Building, 1400 Independence Avenue, SW.,

Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please ask the guard at the entrance to the South Building to call (202) 720-8851 in order to be escorted into the building.

- This notice may be accessed via Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov/>; select the Farm Bill link from the menu. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at: (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT:

Andree DuVarney, Branch Chief, Conservation Technical Assistance, Conservation Planning and Technical Assistance Division, U.S. Department of Agriculture, Natural Resources Conservation Service, PO Box 2890, Room 6015—South Building, Washington, DC 20013-2890; telephone: (202) 720-1510; fax: (202) 720-2998; or e-mail: STC2008@wdc.usda.gov, Attn: State Technical Committees.

SUPPLEMENTARY INFORMATION:

Background

NRCS establishes its policies and procedures through its directives system. The NRCS national policy for State Technical Committees, including standard operating procedures, can be accessed through the NRCS directives system at: <http://directives.sc.egov.usda.gov/>. In particular, the standard operating procedures for the State Technical Committees can be found in the Programs Manual (440), Part 501, Subpart B of the NRCS Directives System. NRCS has reprinted the current standard operating procedures in this notice. NRCS reserves the right to update its policy on State Technical Committees, including standard operating procedures, without further *Federal Register* notice.

State Technical Committee Standard Operating Procedures

Part 501

Subpart B—State Technical Committees
501.10 Overview of State Technical Committees

(a) Introduction

The Secretary is required to establish a technical committee in each State to

advise on the implementation and technical aspects of natural resource conservation programs and activities under Title XII of the Food Security Act of 1985 (the 1985 Act), as amended.

(b) Statutory Authority

Sections 1261 and 1262 of the 1985 Act, as amended, establish the State Technical Committees and define their legal roles and responsibilities.

(c) Delegation of Responsibility to NRCS

The Secretary delegated responsibility for establishing technical committees to NRCS. Although the State Conservationist chairs the committee, State Technical Committees may be used in an advisory capacity by other USDA agencies.

(d) Exemption From the Federal Advisory Committee Act

Section 1262 of the 1985 Act, as amended, exempts State Technical Committees and Local Working Groups (Part 501.14) from the Federal Advisory Committee Act requirements.

501.11 Roles and Responsibilities of State Technical Committees

(a) Introduction

State Technical Committees provide information, analysis, and recommendations to appropriate officials of USDA who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the 1985 Act, as amended. Although State Technical Committees are advisory in nature and have no implementation or enforcement authority, USDA gives strong consideration to the State Technical Committees' recommendations.

(b) Roles and Responsibilities Related to All Programs

Each State Technical Committee will provide information, analysis, and recommendations for the following programs and initiatives, as needed and where applicable:

- Agricultural Water Enhancement Program
- Chesapeake Bay Watershed Initiative
- Conservation Compliance
- Conservation Innovation Grants
- Conservation Reserve Program

- Conservation Security Program
- Conservation Stewardship Program
- Conservation of Private Grazing Land
 - Cooperative Conservation
- Partnership Initiative
 - Environmental Quality Incentives Program
 - Farm and Ranch Lands Protection Program
 - Grassland Reserve Program
 - Grassroots Source Water Protection Program
 - Grazing Lands Conservation Initiative
 - Great Lakes Basin Program
 - Technical Service Providers
 - Voluntary Public Access and Habitat Incentive Program
 - Wetlands Reserve Program
 - Wildlife Habitat Incentive Program

(c) Example Recommendations

Such recommendations may include, but are not limited to:

- Priority natural resource concerns in the State;
- Criteria for priority watersheds for programmatic focus;
- Appropriate mix of conservation programs and practices to address natural resource concerns, including coordination with relevant State and Tribal programs;
- Cost-share rates as applied in payment schedules for conservation practices;
- Techniques for outreach to historically underserved citizens;
- Criteria to be used in ranking program applications;
- Conservation practice standards; and
- Innovative conservation practices and approaches.

(d) Review of Local Working Groups

Annually, the State Technical Committees will review whether Local Working Groups are addressing State priorities and criteria for ranking program applications.

(e) Role of the State Conservationist

The State Conservationist will:

- Chair the committee;
- Ensure representation of all interests, to the extent practicable;
- Give strong consideration to the committee's advice on NRCS programs, initiatives, and activities;

- Call and provide notice of public meetings;
- Follow the Standard Operating Procedures; and
- Provide other USDA agencies with recommendations from the State Technical Committee for programs under their purview.

501.12 State Technical Committee Membership

(a) Introduction

Each State Technical Committee will be composed of agricultural producers, owners/operators of nonindustrial private forest land, and other professionals that represent a variety of interests and disciplines in the soil, water, wetland, plant, and wildlife sciences.

(b) Composition

The State Technical Committee for each State shall include representatives from among the following:

- Natural Resources Conservation Service, USDA;
- Farm Service Agency (FSA), USDA;
- FSA State Committee, USDA;
- Forest Service, USDA;
- National Institute of Food and Agriculture, USDA;
- Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;
- Association of soil and water conservation districts;
- State departments and agencies within the State, including the:
 1. Agricultural agency;
 2. Fish and wildlife agency;
 3. Forestry agency;
 4. Soil and water conservation agency;
- and
- 5. Water resources agency.
- Agricultural producers representing the variety of crops and livestock or poultry raised within the State;
- Owners of nonindustrial private forest land;
- 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; and
- Agribusiness.

(c) Other Members

The State Conservationist will invite other Federal agencies and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate, as needed.

(d) Ensuring Diversity

To ensure that recommendations of the State Technical Committee take into account the needs of diverse groups served by USDA, membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals including, but not limited to, the following:

- Minorities;
- Women;
- Persons with disabilities; and
- Socially and economically disadvantaged groups.

501.13 Specialized Subcommittees of State Technical Committees

(a) Introduction

In some situations, specialized subcommittees composed of State Technical Committee members may be needed to analyze and refine specific issues. The State Conservationist may assemble certain committee members, including members of Local Working Groups and other experts, to discuss, examine, and focus on a particular technical or programmatic topic, or combination of such.

(b) Public Involvement

Specialized subcommittees are open to the public and may seek public participation, but they are not required to do so. Recommendations of specialized subcommittees will be presented in general sessions of State Technical Committees, where the public is notified and invited to attend.

(c) Examples of Specialized Subcommittees

The following are examples of specialized subcommittees:

Examples of specialized subcommittees	Program or topic	Task
Environmental Quality Incentives Program Ranking Criteria Subcommittee.	Environmental Quality Incentives Program	Provide input to develop State ranking criteria and make recommendations to the State Technical Committee.
State Forestry Subcommittee	All programs	Provide recommendations to the State Technical Committee on forestry conservation practices and payment rates to be supported in conservation programs.

Examples of specialized subcommittees	Program or topic	Task
Conservation Easement Geographic Rate Subcommittee.	Wetlands Reserve Program and Grassland Reserve Program.	Develop recommendations for the Geographic Area Rate Cap and present it to the State Technical Committee.
Payment Schedule Subcommittee	All cost-sharing programs	Provide recommendations for practices and payment rates for conservation programs that support program objectives and State and local priorities.
State Wildlife Subcommittee	Wildlife Habitat Incentive Program (WHIP)	Provide recommendations (to the State Technical Committee) for the State WHIP plan that incorporates priorities of the State comprehensive wildlife action plan and similar plans and initiatives.
Priority Watershed Subcommittee	Chesapeake Bay Watershed Initiative	Recommend priority watersheds for focusing funding for effective use of available resources.

501.14 Standard Operating Procedures for State Technical Committees

(a) Organization and Function

The State Conservationist will serve as the Chairperson of the State Technical Committee.

State Technical Committees will be used to provide information, analysis, and recommendations to NRCS and other USDA agencies responsible for natural resource conservation activities and programs under Title XII of the 1985 Act, as amended.

(b) Membership

Individuals or groups wanting to become a member on a State Technical Committee within a specific State may submit to the State Conservationist a request that explains their interest and outlines their credentials for becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable.

The State Conservationist will respond to requests for State Technical Committee membership in writing within a reasonable period of time, not to exceed 60 days.

State Technical Committee membership will be posted on the NRCS State Web site.

(c) Meeting Scheduling

The State Technical Committee should meet at least twice a year at a time and place designated by the State Conservationist. Other meetings may be held at the discretion of the State Conservationist. Meetings will be called by the State Conservationist whenever it is the opinion of the State Conservationist that there is business that should be brought before the committee for action. Any USDA agency, however, can make a request of the State Conservationist for a meeting.

(d) Public Notification

State Technical Committee and subcommittee meetings are open to the public.

The State Conservationist will provide public notice of and allow public attendance at all State Technical Committee meetings. The State Conservationist will publish a meeting notice at least 14 calendar days prior to the meeting. Notification may exceed the 14 calendar-day minimum where State open meeting laws exist and require a longer notification period. The minimum 14 calendar-day notice requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist. The State Conservationist will publish this meeting notice in one or more widely available newspaper(s), including recommended Tribal publications, to achieve statewide and Tribal notification. The meeting notice will also be posted to the NRCS State Web site. The meeting notice will include meeting time, location, agenda items, and point of contact.

(e) Meeting Content

The State Conservationist will prepare a meeting agenda and provide it to the committee members at least 14 calendar days prior to a scheduled meeting. Additional background materials may be provided before the meeting at the discretion of the State Conservationist. The minimum 14 calendar-day requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist.

Additional agenda items will be considered if submitted in writing to the State Conservationist at least 5 working days prior to the meeting. The State Conservationist may amend the agenda prior to the meeting without notice to the State Technical Committee, or at the meeting based on suggestions from

participating members. The agenda will be posted to the NRCS State Web site.

(f) Public Participation

Individuals attending State Technical Committee meetings will be given the opportunity to address the committee and present their opinions and recommendations. While presenters are encouraged to provide written copies of their comments, they are not required to do so.

State Conservationists are encouraged to request written comments on agenda items from all members of the State Technical Committee whether they are in attendance at the meeting or not. Subsequent to the meeting, if the State Conservationist determines that additional comments and recommendations are needed on specific topics, the State Conservationist will mail a request for written comments to all members of the State Technical Committee within 7 calendar days of the meeting. The letter will fully explain the nature of the request for information and provide at least 14 calendar days for a response. Comments received will be summarized and presented at the next State Technical Committee meeting and will be directly posted on the NRCS State Web site.

If time allows, opportunity to discuss non-agenda items will be provided at the end of the meeting.

(g) Conducting Business

The meetings will be conducted as an open discussion among members. Discussion will focus on the programs and activities identified in Section 501.11(b). All recommendations will be considered.

The following guidelines will govern meeting discussions:

- (1) The State Conservationist or his or her designee will lead the discussion.
- (2) Only one person may speak at a time. Every participant should have an opportunity to speak. The State

Conservationist or his or her designee is responsible for recognizing speakers.

(3) State Technical Committees are advisory in nature and all recommendations are considered. Members may be polled, but voting on issues is not appropriate.

(4) The State Conservationist, in consultation with those members present, may establish time limits for discussion on individual agenda items.

(5) The State Conservationist will defer to the next meeting those agenda items not covered because of time limits.

(h) Record of Meetings

Summaries for all State Technical Committee meetings will be available within 30 calendar days of the committee meeting and distributed to committee members. The summaries will be filed at the appropriate NRCS State office and posted to the NRCS State Web site.

(i) Response to State Technical Committee Recommendations

The State Conservationist will inform the State Technical Committee as to the decisions made in response to all State Technical Committee recommendations within 90 days. This notification will be made in writing to all State Technical Committee members and posted to the NRCS State Web site.

501.15 Local Working Groups

(a) Introduction

Local Working Groups are composed of agricultural producers, owners/operators of nonindustrial private forest land, professionals representing agricultural and natural resource interests, and individuals representing a variety of disciplines in the soil, water, wetland, plant, forestry, and wildlife sciences who are familiar with agricultural and natural resource issues in the local community.

(b) Role of Local Working Groups

Local Working Groups provide recommendations to the District Conservationist (or Designated Conservationist) and the State Conservationist on local natural resource priorities and criteria for conservation activities and programs listed in Section 501.11(b).

(c) Membership

Local Working Group membership should be diverse and focus on agricultural interests and natural resource issues existing in the local community. Membership should include agricultural producers representing the variety of crops and

livestock and/or poultry raised within the local area; owners of nonindustrial private forest land, as appropriate; representatives of agricultural and environmental organizations; and representatives of governmental agencies carrying out agricultural and natural resource conservation programs and activities.

To ensure that recommendations of the Local Working Group take into account the needs of diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals including, but not limited to, the following:

- Minorities;
- Women;
- Persons with disabilities; and
- Socially and economically disadvantaged groups.

Individuals or groups wanting to become a member of a Local Working Group may submit to the Local Working Group Chairperson and the NRCS District Conservationist (or Designated Conservationist), a request that explains their interest and outlines their credentials for becoming a member of the Local Working Group. The District Conservationist (or Designated Conservationist) will assist the soil and water conservation district in making decisions concerning membership of the group.

(d) Local Working Groups Relationship to State Technical Committees

Local Working Groups may provide input and recommendations to the State Technical Committee.

501.16 Standard Operating Procedures for Local Working Groups

(a) Organization and Function

Local Working Groups are to provide recommendations on local natural resource priorities and criteria for USDA conservation activities and programs. Local Working Groups are normally chaired by the appropriate soil and water conservation district (SWCD). In the event the SWCD is not able, or does not choose to chair the Local Working Group, NRCS' District Conservationist (or Designated Conservationist) will be responsible for those duties.

(b) Meeting Scheduling

The Local Working Group should meet at least once each year at a time and place designated by the Chairperson unless otherwise agreed to by the members of the Local Working Group.

Other meetings may be held at the discretion of the Chairperson. Meetings will be called by the Chairperson whenever it is determined that there is business that should be brought before the Local Working Group.

(c) Public Notification

Local Working Group meetings are open to the public. Public notice of Local Working Group meetings should be provided at least 14 calendar days prior to the meeting. Notification will need to exceed the 14 calendar-day minimum where State open meeting laws exist and require a longer notification period. The minimum 14 calendar-day notice requirement may be waived in the case of exceptional conditions, as determined by the Chairperson or NRCS District Conservationist (or Designated Conservationist). The public notice of Local Working Group meetings will include the time, place, and agenda items for the meeting.

(d) Meeting Information

Agendas and information will be provided to the Local Working Group members at least 14 calendar days prior to the scheduled meeting. The District Conservationist (or Designated Conservationist) will assist the Local Working Group Chairperson, as requested, in preparing meeting agendas and necessary background information for meetings. The minimum 14 calendar-day notice requirement may be waived in the case of exceptional conditions, as determined by the Chairperson or NRCS District Conservationist (or Designated Conservationist).

(e) Public Participation

Individuals attending the Local Working Group meetings will be given the opportunity to address the Local Working Group. Opportunity to address non-agenda items will be provided if time allows at the end of the meeting. Presenters are encouraged to provide written records of their comments to the Chairperson at the time of the presentation but are not required to do so. Written comments may be accepted if provided to the Chairperson no later than 14 calendar days after a meeting.

(f) Conducting Business

The meetings will be conducted as an open discussion among members. Discussion will focus on identifying local natural resource concerns that can be treated using programs and activities identified in Section 501.11(b). All recommendations will be considered.

The following guidelines will govern meeting discussions:

(1) The Chairperson will lead the discussion.

(2) Only one person may speak at a time. Every participant should have an opportunity to speak. The Chairperson or his or her designee is responsible for recognizing speakers.

(3) The Chairperson, in consultation with those members present, may establish time limits for discussion on individual agenda items.

(4) The Chairperson will defer to the next meeting those agenda items not covered because of time limits.

(g) Record of Meetings

Summaries for all Local Working Group meetings will be available within 30 calendar days of the meeting, and will be filed at the appropriate local NRCS office.

(h) Input to State Technical Committee

Local Working Group recommendations are to be submitted to State Technical Committee Chairperson and/or the District Conservationist (or Designated Conservationist), as appropriate, within 14 calendar days after a meeting.

Signed on 1st day of April 2009, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. E9-7771 Filed 4-6-09; 8:45 am]

BILLING CODE

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Docket No.: AMS-FV-08-0047; FV-08-702]

RIN 0581-AC82

Amendments to Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes to amend provisions of the Mushroom Promotion, Research, and Consumer Information Order (Order) to reapportion membership of the Mushroom Council (Council) to reflect shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and

propose good agricultural and handling practices and related activities for mushrooms. This rule proposes changes to the Order based on amendments to the Food Conservation and Energy Act.

DATES: Comments must be received by May 7, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632-S, Washington, DC 20250-0244; fax: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at <http://www.regulations.gov>.

All comments received will be posted without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915 or (888) 720-9917 (toll free); or facsimile: (202) 205-2800; or e-mail: Kimberly.Coy@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (Order) 7 CFR part 1209. The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) 7 U.S.C. 6101-6112.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not effect or preempt any State, Federal, or local laws, regulations, or policies authorizing promotion or research relating to an agricultural commodity, unless they represent an irreconcilable conflict with this rule.

Under section 1927 of the Act, a person subject to an Order may file a written petition with the Department stating that the Order, any provision of the Order, or any obligation imposed in

connection with the Order, is not in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Initial Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (importers) as having receipts of no more than \$7,000,000. There are approximately 107 producers and 18 importers subject to the Order, and thus, eligible to serve on the Council. The majority of these producers and importers would not be considered small entities as defined by the Small Business Administration. Producers and importers of 500,000 pounds or less on average of mushrooms for the fresh market are exempt from the Order.

The current Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States is divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. Currently, for importers (referred to as Region 5), one Council member seat is allocated when imports, on average, exceed 35,000,000 pounds of mushrooms annually. The