

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 610

#### State Technical Committees

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) is publishing a final rule that sets forth the policies for State Technical Committees at 7 CFR part 610, subpart C. NRCS published the State Technical Committee interim final rule in the **Federal Register** on November 25, 2008. NRCS published standard operating procedures for State Technical Committees as a notice in the **Federal Register** on April 7, 2009. The public was invited to comment on both the interim final rule and the standard operating procedures. This final rule incorporates changes made to 7 CFR part 610, subpart C, in response to public comments received on the interim final rule and the standard operating procedures. Subsequent to the publication of this final rule, and utilizing the comments received, NRCS will make further updates to its standard operating procedures.

**DATES:** *Effective Date:* The rule is effective December 17, 2009.

**ADDRESSES:** This notice may be accessed via the 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:** Dan Lawson, Acting Director, Conservation Planning and Technical Assistance Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250; telephone: (202) 720-1510; fax: (202) 720-2998; or e-mail: [dan.lawson@wdc.usda.gov](mailto:dan.lawson@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Certifications

##### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined this final rule is not significant and will not be reviewed by OMB under Executive Order 12866.

##### *Regulatory Flexibility Act*

The final rule will not have a significant environmental impact on small entities. NRCS has determined that the Regulatory Flexibility Act does not apply.

##### *Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that the State Technical Committee final rule discloses no disproportionately adverse impact for minorities, women, or persons with disabilities. The incorporated changes to 7 CFR part 610, subpart C, were required by the Food, Conservation, and Energy Act of 2008 (2008 Act). The 2008 Act changed the composition and responsibilities of the State Technical Committees. Specifically, the 2008 Act added "agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences" and "owners of nonindustrial private forest land" as members of the committee. The 2008 Act removed the U.S. Fish and Wildlife Service as a statutorily identified member of the committee, and modified the requirement for agriculture producer member participation. Agriculture producer members are no longer required to have conservation expertise. Agriculture producer members are now required to represent a variety of crops and livestock or poultry raised within the State. The Secretary continues to have discretionary authority to include other agency personnel with expertise in soil, water, wetland, and wildlife management. These changes are reflected in § 610.22 of this regulation,

and the language in the standard operating procedures addresses the composition of the committees which is broad enough to add members that have experience to address agricultural and natural resources issues regardless of race, color, national origin, gender, sex, or disability status. Outreach and communication strategies are in place to ensure that potential members will be provided the same information to allow them to make informed decisions regarding membership. The State Technical Committee membership applies to all persons equally regardless of race, color, national origin, gender, sex, or disability status. Therefore, the State Technical Committee rule portends no adverse civil rights implications for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis may be obtained from Dan Lawson, Acting Director, Conservation Planning and Technical Assistance Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250.

##### *Environmental Analysis*

The final rule involves the establishment of State Technical Committees. As provided by 7 CFR part 1b.3—Categorical Exclusions, the final rule involves administrative functions that are categorically excluded from further environmental review under the National Environmental Policy Act. Specifically, 7 CFR part 1b.3 states: (a) The following are categories of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of an environmental assessment or environmental impact statement, unless individual agency procedures prescribed otherwise.

(1) Policy development, planning, and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection

when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation; and

(7) Activities related to trade representation and market development activities abroad.

The State Technical Committee rule meets the criteria for being a categorical exclusion under § 1b.3(1) policy development, planning, and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions; and § 1b.3(6) activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation.

#### *Paperwork Reduction Act*

Section 2904 of the 2008 Act provides that the promulgation of regulations and administration of Title II of the Act will be made without regard to chapter 35 of Title 44 of the U.S.C., also known as the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

#### *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 that 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 parts 11, 614, and 780 of Title 7 of the CFR must be exhausted.

#### *Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The Department of Agriculture (USDA) 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, USDA

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.

#### *Unfunded Mandates Reform Act of 1995*

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.

#### **Discussion of State Technical Committees**

##### *Interim Final Rule and Standard Operating Procedures*

NRCS published an interim final rule on November 25, 2008. This rule incorporated changes to 7 CFR part 610, subpart C, required by the 2008 Act amendments to Subtitle G of Title XII of the Food Security Act of 1985 (1985 Act). The 2008 Act changed the composition and responsibilities of State Technical Committees. Specifically, the 2008 Act added “agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences” and “owners of nonindustrial private forest land” as eligible members of the committee. The 2008 Act removed several Federal agencies as statutorily identified members of the committee, and modified the requirement for agriculture producer member participation. The requirement that agricultural producer members have “demonstrable conservation expertise” was deleted and replaced with a requirement that agricultural producer members represent a variety of crops and livestock or poultry raised within the State. NRCS continues to have discretionary authority to include other agency personnel with expertise in soil, water, wetland, and wildlife management. These changes were

reflected in § 610.22 of the interim final rule.

Section 1261(c) of the 1985 Act, as revised by the 2008 Act, states that: “each State Technical Committee will be composed of agricultural producers and other professionals that represent a variety of disciplines in soil, water, wetland, and wildlife sciences.” To ensure that recommendations of State Technical Committees take into account the needs of the diverse groups served by USDA, the interim final rule provided in § 610.22 that committee 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; i.e. minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers. Since the State Conservationist determines the membership on the State Technical Committee, individuals or groups wanting to participate as members may submit to the State Conservationist a request that explains their interest and outlines their relevant credentials for becoming a member. The State Conservationist ensures that all interests are adequately represented and heard on the committee, and that the recommendations, when adopted, address natural resource concerns.

Section 1261 of the 1985 Act provides that each committee is advisory and has no implementation or enforcement authority. The 2008 Act amendments continue this provision in Section 1262(c)(1). However, in Section 1262(c)(2), the committees’ role is expanded to provide advice on whether Local Work Groups are addressing State priorities. In the interim final rule, NRCS revised § 610.24(c) to incorporate this change.

The 2008 Act amendments to Section 1261(b)(1) require the Secretary to establish standard operating procedures for committees. NRCS published standard operating procedures as a notice in the **Federal Register** on April 7, 2009. NRCS incorporated these procedures in agency directives which are available through the NRCS State Technical Committees’ Web site and offices.

The 2008 Act stated that any Local Working Group will be considered to be a subcommittee of the applicable State Technical Committee, and thus exempt from the Federal Advisory Committee Act (FACA). NRCS changed § 610.21, Purpose and Scope, and § 610.25, Specialized Subcommittees, in the

interim final rule to incorporate this statutory provision.

### Discussion of Comments

NRCS received a total of 16 responses from Soil and Water Conservation Districts (SWCDs), State Associations of Conservation Districts, Indian Nations Conservation Alliance, conservation and agriculture interests, State natural resource agencies, Association of Fish and Wildlife Agencies, and a Federal agency. NRCS received many positive comments including the following: One respondent appreciated the use of subcommittees to address specific issues; another respondent applauded the change exempting Local Working Groups from the FACA in order that stakeholders may also take part in the discussion; three respondents approved of the addition of the State Technical Committees' role in the review of Local Working Groups to ensure consistency; another respondent approved of the public attendance at meetings; one respondent supported the 14-day public notice; another respondent expressed support for the standard operating procedures; and one respondent supported the addition of "owners of non-industrial private forest land" required by the 2008 Act. NRCS appreciates receiving this feedback which affirms the language in the interim final rule and standard operating procedures.

Other comments generally reflected the need for NRCS to enhance communication between the agency and the committees, as well as ensure that all groups are adequately represented on the committees. The comments are categorized by topic.

#### 1. Responsibilities of State Technical Committees

*Comment:* Seven respondents requested that NRCS expand the list of activities in § 610.24(a). Among these responses, one respondent recommended NRCS include Highly Erodible Land and Wetland Conservation provisions; two respondents requested the Conservation Cooperative Partnership Initiative (CCPI); one recommended the Agricultural Management Assistance (AMA) Program be added; another respondent recommended adding the Conservation Innovation Grants and the Agricultural Water Enhancement Program; another respondent requested interim conservation practice standard creation and revision be added, including conservation practice standards for specialty crops, organic production, precision agriculture, energy conservation and bioenergy

production, native and managed pollinators, and forestry; and another respondent requested State-specific conservation practice standards, policies, guidelines, and programs.

One respondent requested § 610.24 be expanded to include after the list of programs the following: "Each State Technical Committee may also provide advice on such other programs or conservation issues as may be requested by the State Conservationist."

*Response:* NRCS partially agrees with the respondents and amends Section § 610.24(a) to include the CCPI and conservation practice standards and specifications. The AMA Program is not listed since it is not a Title XII program under the 1985 Act, and therefore not encompassed by the statutory authority of State Technical Committees under Subtitle G of Title XII. In response to the comments received, NRCS is inserting "not limited to" in the sentence preceding the listed activities and programs. This is to clarify that State Technical Committees may offer recommendations on programs and activities other than the ones listed as long as they are within Title XII.

*Comment:* One respondent recommended adding subprogram allocation decisions to the list of recommendations to be made by the State Technical Committee in § 610.24 (a).

*Response:* No changes were made to the rule in response to this comment. NRCS believes the updated language in § 610.24 allows for the issue to be a topic of discussion for State Technical Committees.

#### 2. State Technical Committee and Local Working Group Membership

*Comments:* Numerous comments were received regarding the composition of State Technical Committees and Local Working Groups. Two respondents were concerned that State Conservationists may be more restrictive than Congress intended. Respondents suggested a number of adjustments to specifically recognize certain groups including: Tribal conservation districts; non-profit organizations with expertise reaching beginning and socially disadvantaged farmers and ranchers; U.S. Fish and Wildlife Service; a representative of State Fish and Wildlife Agencies; State Forestry Associations; and representatives from Federal, State or local government agencies with statutory responsibility for the resources being analyzed by the subcommittee. They also requested clarification that the list is not exhaustive and that the requirement for agriculture producers to

have conservation expertise be reinstated.

Another respondent wanted a broad array of agencies, organizations, producers, and conservation professionals to serve on Local Working Groups, and another respondent commented that the State Conservationist should have broad latitude to invite and allow varied expertise while keeping the State Technical Committee to a workable size.

Another respondent requested that the standard operating procedures make it clear that Local Working Groups need to include members with expertise to identify the most significant environmental challenges associated with agriculture production.

*Response:* The 2008 Act removed specific membership for several Federal agencies and supported broad representation from the agriculture community. The interim final rule mirrored the statute in terms of the composition of the State Technical Committee. However, NRCS believes it is important to obtain and utilize the expertise of representatives from the conservation and agriculture communities, as well as Federal and State agencies, and does not want to limit a State Conservationist's ability to have access to necessary resources. NRCS has incorporated the following policy in the standard operating procedures: "\* \* \* 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." Additionally, NRCS incorporated language in § 610.22 of this final rule to address membership concerns. Specifically, NRCS revised the language in paragraph (a)(6) to remove the acreage size requirement for the Federally recognized Indian Tribes; in paragraph (b) added as invitees State and regional agencies and organizations; in paragraph (c) added Beginning Farmers and Ranchers; and in paragraph (d) clarified that it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership.

Further, NRCS addressed concerns related to historically underserved groups by including the following in the standard operating procedures: "To ensure that recommendations of State Technical Committees 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.”

*Comments:* Two respondents requested that NRCS revise § 610.22(d) regarding decisions to deny membership. One respondent recommended NRCS require that if the State Conservationist rejects an application for participation, they inform the applicant of the grounds for rejection. Another respondent recommended specific language related to the ability to appeal these decisions. One respondent recommended the statement, “It is the State Conservationist’s responsibility to ensure equal representation of all interests” be included. Another respondent recommended that NRCS insert the word “individual” before the word “membership.”

*Response:* NRCS agrees with most of the comments and has incorporated the following language in the standard operating procedures, “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.” In § 610.22(d) of the final rule, NRCS added clarification that it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. However, decisions related to membership are at the discretion of the State Conservationist.

*Comment:* One respondent commented that most Tribal conservation districts and many socially disadvantaged community-based organizations do not have the resources to pay travel expenses for a representative to attend State Technical Committee meetings. The respondent asked whether NRCS can cover the cost of these travel expenses.

*Response:* Tribal conservation districts and socially disadvantaged farmers and ranchers’ participation in State Technical Committee meetings is important to NRCS. NRCS is not offering to pay expenses of State Technical Committee participants; however, State Conservationists may have various means of facilitating the participation of producers and organizations in State Technical Committee meetings such as the use of net conference hook-ups in remote locations, holding State Technical Committee meetings in strategic locations, and other

arrangements. If an individual or an organization is having difficulty participating on the State Technical Committee because of limited financial resources, it is recommended that the matter be brought to the attention of the State Conservationist. No changes were made to the rule in response to this comment.

*Comment:* One respondent recommended 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 State Technical Committee subcommittees, including but not limited to Local Working Groups, and should include a clear and comprehensive description of the Local Working Group’s responsibilities.

*Response:* In response to this comment, NRCS has incorporated language in the standard operating procedures relating to these issues and has modified § 610.25(b)(3) in the final rule. The public can view the standard operating procedures at the following Web address: <http://directives.sc.egov.usda.gov/>, or obtain a copy from their local NRCS office.

*Comment:* One respondent recommended that NRCS revise § 610.25(b) and in the interim, before issuing the final rule, issue more immediate guidance to direct State Conservationists to include non-profit organizations to participate on Local Working Groups.

*Response:* NRCS has modified § 610.25(b)(3) as a result of this comment. Also, the recently published standard operating procedures contain a discussion on membership of Local Working Groups and will be updated as a result of this and other comments.

*Comment:* One respondent commented that it is important that the rule is clear that the work of State Technical Committees will continue even if some required representatives choose not to participate regularly.

*Response:* NRCS concurs with the suggestion and will insert “if willing to serve” in the final rule to clarify that the work of State Technical Committees will continue in the absence of a representative from an invited group.

### 3. State Conservationists’ Response to Recommendations

*Comments:* Seven respondents commented about communication between the Local Working Group, State Technical Committee, and the State Conservationist and the importance of receiving feedback on Local Working Group recommendations. Several requested that if the recommendations

are not incorporated into the USDA program delivery system, NRCS should state the reasons behind that decision.

*Response:* NRCS agrees with the comments and has established the following policy within the standard operating procedures: “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.”

### 4. Subcommittees

*Comment:* One respondent commented that the interim final rule requires State Technical Committee subcommittees to provide recommendations they develop to the State Technical Committee in a general session where the public is notified and invited to attend, but it does not impose the same requirement on Local Working Groups.

*Response:* Specialized subcommittees of State Technical Committees may or may not have public participation; and, therefore, the standard operating procedures state that subcommittee recommendations are to be brought forth to the State Technical Committee, where the public is invited, for review or action. The same requirement is not imposed on Local Working Groups as the meetings are open to the public. In regard to the mechanism(s) to be used by State Technical Committees to review whether Local Working Groups are addressing State priorities, NRCS is suggesting that State Conservationists recommend a process to the State Technical Committees that accommodates the needs of their respective States.

*Comment:* One respondent recommended § 610.25 be revised to add a statement requiring that State Conservationists open the invitation to participate on subcommittees to the entire State Technical Committee.

*Response:* NRCS revised § 610.25(a) in the final rule to read, “In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic.” The recommendations from the subcommittee are to be presented to the full State Technical Committee.

### 5. Local Working Groups

*Comments:* Four respondents commented on the importance of SWCDs convening Local Working Groups. The respondents stated that SWCDs are uniquely positioned to undertake the process of bringing everyone together to provide input. Another respondent commented that SWCDs be supported with additional resources so that they have the capacity to fulfill their mandated responsibilities.

*Response:* NRCS agrees that SWCDs are uniquely positioned to organize and convene the Local Working Groups and has incorporated the following language in the standard operating procedures, "Local Working Groups are normally chaired by the appropriate 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." This language has already been incorporated into the NRCS Conservation Programs Manual (440) subpart B, part 501 (*see* <http://directives.sc.egov.usda.gov/>). NRCS views these comments as relating to procedural issues and, therefore, did not make any changes to the regulation.

NRCS recognizes the importance of the SWCD having an adequate level of resources necessary to fulfill their responsibilities. However, no changes were made to the rule in response to this comment. NRCS believes this suggestion is beyond the scope of this regulation.

*Comments:* Five respondents commented that they did not feel it is appropriate to expect the State Conservationist to be present at all Local Working Group meetings. NRCS should be represented by the district conservationist or designated conservationist.

*Response:* NRCS did not intend for State Conservationists to be present at Local Working Group meetings. Although NRCS did not make changes to the rule in response to this comment, the agency will clarify its operating procedure.

*Comment:* One respondent commented that Local Working Groups should meet once per year at a minimum.

*Response:* NRCS agrees with the comment and has incorporated the following language in the standard operating procedures: "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."

*Comments:* Five respondents requested that the Local Working Group, as a subcommittee to the State Technical Committee, provide a report to the State Conservationist and a summary of all Local Working Group meetings be presented during the State Technical Committee meeting. Respondents differed in their recommendations on the NRCS representative that should receive the report. Recommendations included delivering it to the State Conservationist, district conservationist, or area conservationist.

*Response:* NRCS agrees with the comments and has addressed them in the standard operating procedures as follows: "Local Working Group recommendations are to be submitted to State Technical Committee Chairperson or the district conservationist (or designated conservationist), as appropriate, within 14 calendar days after a meeting." The standard operating procedures allow for flexibility in the procedure by which Local Working Group recommendations are forwarded to the State Technical Committee. Ultimately, the intent is to ensure that the State Technical Committee receives the information.

*Comment:* One respondent was concerned that the process to obtain, evaluate, and implement recommendations of Local Working Groups may be overly complicated and burdensome to accomplish in a timely manner. The respondent encouraged simplification in the process and that significant weight be given to local and State priorities in determining allocation of NRCS program funds.

*Response:* NRCS appreciates the respondent's comment regarding an overly complicated process and has attempted to provide a "blueprint" for States to operate State Technical Committees in an efficient manner, as well as allow for adequate flexibility for States to tailor the State Technical Committee operations to meet their needs. No changes were made to the rule in response to this comment; however, the agency will consider this comment when updating the current standard operating procedures.

*Comment:* One respondent commented that Local Working Groups should provide the State Technical Committee with information on their recommendations, including the process used to develop the recommendations.

*Response:* NRCS agrees that this requirement would help Local Working Groups support their recommendations; however, requiring the Local Working Groups to do this may overly complicate the process. No changes were made to the rule in response to this comment. The agency encourages Local Working Groups to include additional information to support their recommendations.

*Comment:* One respondent commented that § 610.25(b)(2) be modified to allow for Local Working Groups to not only provide recommendations on local natural resource priorities and criteria for conservation activities and programs, but to also provide input to the State Technical Committee for their consideration in establishing State priorities.

*Response:* This comment is addressed in the standard operating procedures through the following language, "Local Working Group recommendations are to be submitted to the State Technical Committee Chairperson or the district conservationist (or designated conservationist), as appropriate, within 14 calendar days after a meeting." The Local Working Group recommendations may include input related to establishing State priorities.

### 6. Other

*Comment:* One respondent recommended NRCS establish a Web page for State Technical Committee and Local Working Group meetings to include membership lists, meeting announcements, agenda, minutes, and any determinations related to recommendations.

*Response:* NRCS generally agrees with this comment and has already included the suggestion in the standard operating procedures.

*Comment:* One respondent commented that State Conservationists should have the discretion to take additional transparency and accountability steps beyond the national standard operating procedures.

*Response:* NRCS agrees that State Conservationists should have this discretion. The national policy in the standard operating procedures details the minimum requirements governing the operation of State Technical Committees. State Conservationists have the discretion and flexibility to make management decisions providing all applicable laws and regulations are followed. No changes were made to the rule in response to this comment.

*Comment:* One respondent recommended 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. The respondent also recommended that State Technical Committee members be provided with any documents which will be under discussion at least 14 days before the meeting.

*Response:* The suggestion was included in the standard operating procedures, "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." As this recommendation is included in policy, no changes were made to the rule in response to this comment.

*Comment:* One respondent requested the 14-day meeting notice be modified to a 30-day meeting notice to allow for less conflict and more participation.

*Response:* While the 14 days is a minimum, NRCS recognizes that more advance notice is desirable. Many State Technical Committees find that establishing a schedule for regular (e.g. quarterly) meetings works well. No changes were made to the rule in response to this comment.

*Comment:* One respondent commented that standard operating procedures should be clear that "effectively utilizing State Technical Committees" means using the expertise of its members, specifically scientists and other personnel of State and Federal agencies. Standard operating procedures should be clear that State Technical Committees are to assist the State Conservationist in targeting conservation program resources in a manner that ensures the programs are effective in helping producers produce significant environmental benefits for the public.

*Response:* Although no changes were made to the rule in response to this comment, the rule states, "State Technical Committees are to provide information, analysis, and recommendations to appropriate officials of the Department of Agriculture who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the 1985 Act." NRCS believes that "helping producers produce significant environmental benefits" is embedded in the individual conservation program authorities, selection criteria, and other processes.

*Comment:* One respondent recommended NRCS issue a notice of proposed standard operating procedures and allow a 30-day public comment period.

*Response:* NRCS agrees with this comment. The agency published the standard operating procedures as a notice in the **Federal Register** on April 7, 2009. The notice provided a 60-day public comment period and requested public input on NRCS' updated policy, including standard operating procedures for State Technical Committees. No changes were made to the rule in response to this comment because this recommendation was implemented.

*Comment:* One respondent recommends that prior to NRCS drafting and publishing the standard operating procedures, NRCS should solicit from State Conservationists and State offices substantive input, suggestions, and recommendations for creating the standard operating procedures.

*Response:* NRCS agrees with this comment and followed this suggestion prior to publishing the standard operating procedures in the **Federal Register** on April 7, 2009.

*Comment:* One respondent requested NRCS add "and the USDA agency will address the concerns of the State Technical Committee" to the last sentence of § 610.24(b).

*Response:* The last sentence of § 610.24(b) of the interim final rule states, "the implementing USDA agency will give strong consideration to the State Technical Committee recommendations." NRCS believes all State Technical Committee recommendations should be strongly considered; however, the USDA agencies may not be able to address or effect every recommendation. Therefore, no changes were made to the rule in response to this comment.

#### List of Subjects in 7 CFR Part 610

Soil conservation, State Technical Committee, Technical assistance, and Water resources.

■ For the reasons stated in the preamble, NRCS amends part 610 of Title 7 of the CFR as follows:

#### PART 610—TECHNICAL ASSISTANCE

■ 1. The authority citation for part 610 continues to read as follows:

**Authority:** 16 U.S.C. 590a–f, 590q, 2005b, 3861, 3862.

■ 2. Subpart C is revised to read as follows:

#### Subpart C—State Technical Committees

Sec.

610.21 Purpose and scope.

610.22 State Technical Committee membership.

610.23 State Technical Committee meetings.

610.24 Responsibilities of State Technical Committees.

610.25 Subcommittees and Local Working Groups.

#### Subpart C—State Technical Committees

##### § 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. The Natural Resources Conservation Service (NRCS) will establish in each State a Technical Committee to assist in making recommendations relating to the implementation and technical aspects of natural resource conservation activities and programs. The Department of Agriculture (USDA) will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. Pursuant to 16 U.S.C. 3862(d), these State Technical Committees and Local Working Groups are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

##### § 610.22 State Technical Committee membership.

(a) State Technical Committees will include agricultural producers, nonindustrial private forest land owners, and other professionals who represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences. The State Conservationist in each State will serve as chairperson. The State Technical Committee for each State will include representatives from among the following, if willing to serve:

- (1) NRCS, USDA;
- (2) Farm Service Agency, USDA;
- (3) State Farm Service Agency Committee, USDA;
- (4) Forest Service, USDA;
- (5) National Institute of Food and Agriculture, USDA;
- (6) Each of the Federally recognized Indian Tribes in the State;
- (7) State departments and agencies within the State, including the:
  - (i) Fish and wildlife agency;
  - (ii) Forestry agency;
  - (iii) Water resources agency;
  - (iv) Department of agriculture;
  - (v) Association of soil and water conservation districts; and
  - (vi) Soil and water conservation agency;
- (8) Agricultural producers representing the variety of crops and livestock or poultry raised within the State;
- (9) Owners of nonindustrial private forest land;
- (10) 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 agriculture producers in the State; and  
(11) Agribusiness.

(b) The State Conservationist will invite other relevant Federal, State, and regional agencies, organizations, and persons knowledgeable about economic and environmental impacts of natural resource conservation techniques and programs to participate as needed.

(c) To ensure that recommendations of State Technical Committees take into account the needs of the 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; i.e., minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit a request to the State Conservationist that explains their interest and outlines their credentials which they believe are relevant to becoming a member. Decisions regarding membership are at the discretion of the State Conservationist. State Conservationist decisions on membership are final and not appealable to any other individual or group within USDA.

#### **§ 610.23 State Technical Committee meetings.**

(a) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency or State Technical Committee member.

(b) NRCS will establish and maintain national standard operating procedures governing the operation of State Technical Committees and Local Working Groups in its directive system. The standard operating procedures will outline items such as: The best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of State Technical Committee and Local Working Group meeting notices and agendas; State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical

Committee recommendations; and other items as determined by the Chief.

(c) In addition to the standard operating procedures established under paragraph (b) of this section, the State Conservationist will provide public notice and allow public attendance at State Technical Committee and Local Working Group meetings. The State Conservationist will publish a meeting notice no later than 14 calendar days prior to a State Technical Committee meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist. The State Conservationist will publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation.

#### **§ 610.24 Responsibilities of State Technical Committees.**

(a) Each State Technical Committee established under this subpart will meet on a regular basis, as determined by the State Conservationist, to 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 Food Security Act of 1985 including, but not limited to, the Conservation Reserve Program, Wetlands Reserve Program, Conservation Security Program, Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Cooperative Conservation Partnership Initiative, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habitat Incentive Program. The members of the State Technical Committee may also provide input on other natural resource conservation programs and issues as may be requested by the State Conservationist or other USDA agency heads at the State level as long as they are within the programs authorized by Title XII. Such recommendations may include, but are not limited to, recommendations on:

- (1) The criteria to be used in prioritizing program applications;
  - (2) The State-specific application criteria;
  - (3) Priority natural resource concerns in the State;
  - (4) Emerging natural resource concerns and program needs; and
  - (5) Conservation practice standards and specifications.
- (b) The role of the State Technical Committee is advisory in nature, and the committee will have no implementation or enforcement authority. The implementing agency reserves the authority to accept or reject the committee's recommendations. However, the implementing USDA agency will give strong consideration to the State Technical Committee's recommendations.
- (c) State Technical Committees will review whether Local Working Groups are addressing State priorities.

#### **§ 610.25 Subcommittees and Local Working Groups.**

(a) *Subcommittees.* In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation, but it is not required to do so. Nevertheless, recommendations resulting from these subcommittee sessions, other than sessions of Local Working Groups, will be made only in a general session of the State Technical Committee where the public is notified and invited to attend. Decisions resulting from recommendations of Local Working Groups will be communicated to NRCS in accordance with the standard operating procedures described in § 610.23(b).

(b) *Local Working Groups.* (1) Local Working Groups will be composed of conservation district officials, agricultural producers representing the variety of crops and livestock or poultry raised within the local area, nonindustrial private forest land owners, and other professionals representing relevant agricultural and conservation interests and a variety of disciplines in the soil, water, plant, wetland, and wildlife sciences who are familiar with private land agricultural and natural resource issues in the local community;

(2) Local Working Groups will provide recommendations on local

natural resource priorities and criteria for conservation activities and programs; and

(3) Local Working Groups will follow the standard operating procedures described in § 610.23(b).

Signed this 10th day of December 2009 in Washington, DC.

**Dave White,**

Chief, Natural Resources Conservation Service.

[FR Doc. E9–30055 Filed 12–16–09; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

[Docket No. FDA–2009–N–0665]

#### New Animal Drugs for Use in Animal Feeds; Ractopamine; Tylosin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of two-way combination Type B and C medicated swine feeds formulated with ractopamine hydrochloride and tylosin phosphate following use of tylosin tartrate medicated drinking water consistent with the sequential use approved for single-ingredient tylosin medicated swine feed.

**DATES:** This rule is effective December 17, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Timothy Schell, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8116, e-mail: [timothy.schell@fda.hhs.gov](mailto:timothy.schell@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Elanco Animal Health, a Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–172 for use of two-way combination Type B and C medicated swine feeds formulated with PAYLEAN (ractopamine hydrochloride) and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles. The supplement provides use of two-way combination Type B and C medicated swine feeds formulated with ractopamine hydrochloride and tylosin phosphate following use of tylosin tartrate medicated drinking water consistent with the sequential use approved for single-ingredient tylosin medicated swine feed (73 FR 76946, December 18, 2008). The supplemental NADA is approved as of October 23, 2009, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

In addition, FDA has noticed that the tylosin levels for single-ingredient Type

C medicated swine feed are not clearly described in 21 CFR 558.625. At this time, those regulations are being revised to clarify this use of levels. This action is being taken to improve the accuracy of the regulations.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 2. In § 558.500, revise the table in paragraphs (e)(1)(ii) and (e)(1)(iii); and add paragraph (e)(1)(iv) to read as follows:

#### § 558.500 Ractopamine.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

| Ractopamine in grams/ton | Combination in grams/ton | Indications for use                                                                                                                                                                                                                                       | Limitations                                                                                                                | Sponsor |
|--------------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|---------|
| *                        | *                        | *                                                                                                                                                                                                                                                         | *                                                                                                                          | *       |
| (ii) 4.5 to 9            | Tylosin<br>40 or 100     | Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of swine dysentery associated with <i>Brachyspira hyodysenteriae</i> and porcine proliferative enteropathies (PPE, ileitis) associated with <i>Lawsonia intracellularis</i> . | Feed 100 grams per tons (g/ton) continuously as sole ration for at least 3 weeks followed by 40 g/ton until market weight. | 000986  |
| (iii) 4.5 to 9           | Tylosin<br>100           | Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of porcine proliferative enteropathies (PPE, ileitis) associated with <i>L. intracellularis</i> .                                                                             | Feed continuously as sole ration for 21 days.                                                                              | 000986  |