

Proposed Rules

Federal Register

Vol. 62, No. 233

Thursday, December 4, 1997

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

RIN 0578-AA22

Technical Assistance

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: Section 342 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) expands the membership and roles of State Technical Committees established pursuant to Section 1261 of the Food Security Act of 1985 (the 1985 Act), as amended. Under Section 1261, the Secretary must establish a technical committee in each State to assist in making technical considerations related to the implementation of the 1985 Act's conservation provisions. Consistent with the 1985 Act, the United States Department of Agriculture (USDA) uses these State Technical Committees in an advisory capacity.

This proposed rule sets forth the policies and procedures for the use of State Technical Committees by the USDA, the membership criteria, and the responsibilities assigned to these Committees. It also amends § 610.2 to reflect the responsibilities assigned to the Natural Resources Conservation Service (NRCS) beyond that of soil conservation. This proposed rule amends § 610.2 to acknowledge the NRCS mission to promote the long-term sustainability of all agricultural lands, including cropland, grazing land, pastureland, rangeland, and forestland.

DATES: Comments must be received by January 5, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to: Gary Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service,

P.O. Box 2890, Washington, D.C. 20013-2890; Attention: State Technical Committee. Fax (202) 720-1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the NRCS Federal Register homepage and submit comments at: <http://astro.itc.nrcs.usda.gov:6500>.

FOR FURTHER INFORMATION CONTACT:

Denise Coleman, Conservation Operations Division, Natural Resources Conservation Service; phone: (202) 720-9476; Fax: (202) 720-4265; E-mail: denise_c.coleman@usda.gov, Attention: State Technical Committee.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to Sec. 6(a)(3) of Executive Order 12866, the NRCS has conducted an economic analysis of the potential impacts associated with this proposed rule. Because it is not possible to measure all costs or benefits of State Technical Committee involvement in the decision-making process using strict benefit-cost techniques, a cost effect analysis was used. This analysis estimates that no material adverse effects on the economy, a sector of the economy, agricultural productivity, competition, jobs, the environment, public safety, or State, local, or tribal governments or communities are expected from implementation of this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

NRCS has determined that this proposed rule is within the categorical exclusion for advisory and consultative activities under 7 CFR 1b.3(a)6; therefore, an environmental assessment was not conducted.

Paperwork Reduction Act

This proposed rule does not require identical collection of information. As a

result, the Paperwork Reduction Act provisions do not apply.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, the effects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. 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.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this proposed rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 a risk assessment was not required.

Background and Purpose

Section 1261 of the Food Security Act of 1985, as amended, sets out the membership and roles of the State Technical Committees. The Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6901 *et seq.*) exempts State Technical Committees from provisions of the Federal Advisory Committee Act (5 U.S.C. App.2).

NRCS proposes that State Technical Committee membership be expanded to consist of individuals who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. USDA believes the membership expansion of State Technical Committees, which creates new sources of local conservation expertise, is a positive step. However, NRCS believes that the ultimate responsibility of the State Conservationist is to ensure that all interests are adequately represented on the Committee.

As a result of the passage of the 1996 Act, eligibility for State Technical Committee membership was expanded to include the private sector. In addition to these members, NRCS proposes to add additional agencies and groups based on their historical relationship with USDA and State Technical Committees. These member agencies

and groups included the following: Environmental Protection Agency, Bureau of Indian Affairs, U.S. Geological Survey, U.S. Army Corps of Engineers, State Farm Service Agency Committee, and Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State.

The State Technical Committees shall include one representative from each of the following agencies or groups, unless the agency or group declines membership:

- NRCS, as Chairperson;
- Farm Service Agency;
- State Farm Service Agency Committee;
- Forest Service;
- Cooperative State Research, Education, and Extension Service;
- Rural Development;
- Fish and Wildlife Service;
- Bureau of Land Management;
- Bureau of Indian Affairs;
- U.S. Geological Survey;
- U.S. Army Corps of Engineers;
- Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State;
- State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:
 - State fish and wildlife agency;
 - State forester or equivalent official;
 - State water resources agency;
 - State department of agriculture;
 - State association of soil and water conservation districts;
 - State coastal zone management agency; State soil and water conservation agency; and
 - Other Federal, State, tribal and local agency representatives with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

In addition to other Federal, State, tribal, and local agency and group membership, the State Technical Committees will include members from the following private interests, including:

- Agricultural producers with demonstrable conservation expertise;
- Nonprofit organizations with demonstrable conservation expertise;
- Persons knowledgeable about conservation techniques and programs; and
- Agribusiness.

To ensure that recommendations of the State Technical Committees take

into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

In accordance with the preceding paragraphs, the NRCS State Conservationist determines the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee may submit to the NRCS State Conservationist for that State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the NRCS State Conservationist concerning membership on the committee are final and not appealable to any other individual or group.

State Technical Committee meetings are open to the public. This rule proposes that the State Conservationist provide public notice of meetings that consider issues relating to particular conservation programs. The State Conservationist will publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7 day minimum where State open meeting laws exist and require a longer notification period. NRCS proposes that this notice be published in one or more newspaper(s), including Tribally-recommended publications, to achieve statewide notification. The State Conservationist will schedule and conduct the meetings, although meetings may be requested by any USDA agency as needed.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist, may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. In such situations, where subcommittee meetings occur, public notification and participation are not necessary. Nevertheless, decisions resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

The State Technical Committees have no implementation or enforcement authority. However, the Committees' advisory capacity extends to many of the USDA conservation programs. As set forth in Section 1262 of the 1985 Act (16 U.S.C. 3862(c)), the responsibilities of the State Technical Committee include recommendations on matters such as:

- The technical aspects of wetland protection, restoration, and mitigation requirements;
- Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;
- Highly erodible land exemptions and appeals;
- Wetland and highly erodible land conservation compliance exemptions and appeals;
- Methods to address common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);
- Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;
- Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) under chapter 4 of subtitle D; and Section 1262 of the 1985 Act (16 U.S.C. 3862(c)(8)) also provides that State Technical Committees may offer recommendations on other matters determined appropriate by the NRCS State Conservationist. USDA will seek State Technical Committee recommendations including, but not limited to, the following:
 - The establishment of the Wildlife Habitat Incentives Program (WHIP), as set forth in Section 387 of the 1996 Act (16 U.S.C. 3836a);
 - The development of a Wetland Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;
 - Program assistance to Environmental Quality Incentive Program (EQIP) participants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
 - Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area, 7 CFR part 1466;
 - Criteria to be used in defining a large confined livestock operation under EQIP, 7 CFR part 1466;
 - Suggestions on how often producers' EQIP applications are ranked and selected, 7 CFR part 1466;
 - Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
 - Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;
 - Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a

priority area, under the EQIP provision, 7 CFR part 1466;

- Identification of any categories of conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12; and
- Types or classes of wetland that are not eligible for mitigation exemption, under the Wetland Conservation provisions, 7 CFR part 12.

Technical Assistance

The NRCS delivers the majority of the technical assistance provided to private landowners pursuant to 7 CFR 610.2. Section 610.2 has not yet been revised to provide for the responsibilities assigned to the NRCS beyond that of soil conservation (16 U.S.C. 2005). To reflect the broader mission of NRCS, particularly as it relates to technical assistance provided to private grazing land (16 U.S.C. 2005b), NRCS is amending § 610.2 to acknowledge that one of NRCS' missions is to improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

List of Subjects in 7 CFR Part 610

Soil conservation, Technical assistance, Water resources.

Accordingly part 610 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 610—[AMENDED]

1. The authority for part 610 is revised to read as follows:

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

2. Section 610.2 is revised to read as follows:

§ 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to provide assistance to:

- (1) Reduce soil losses from erosion;
- (2) Help solve soil, water, and agricultural waste management problems;
- (3) Bring about adjustments in land use as needed;
- (4) Reduce damage caused by excess water and sedimentation; and
- (5) Improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is the technical agency of the U.S. Department of Agriculture for providing assistance to conservation districts and other organizations in planning and carrying out their conservation programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

3. A new Subpart C is added 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.

§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and utilizing the advice of State Technical Committees. USDA will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. These State Technical Committees are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The NRCS shall establish in each State a technical committee to assist in making technical recommendations relating to the implementation of conservation provisions. This subpart sets forth the membership guidelines and responsibilities of the State Technical Committees.

§ 610.22 State Technical Committee membership.

(a) State Technical Committees shall include members who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. The State Conservationist is to ensure that all interests are equally represented. Committee membership includes one representative from the following agencies or groups, if willing to serve:

- (1) NRCS, as Chairperson;
- (2) Farm Service Agency;
- (3) State Farm Service Agency Committee;
- (4) Forest Service;
- (5) Cooperative State Research, Education, and Extension Service;
- (6) Rural Development;
- (7) Fish and Wildlife Service;
- (8) Environmental Protection Agency;
- (9) Bureau of Land Management;

- (10) Bureau of Indian Affairs;
- (11) U.S. Geological Survey;
- (12) U.S. Army Corps of Engineers;
- (13) Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;

(14) State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:

- (i) State fish and wildlife agency;
- (ii) State forester or equivalent official;
- (iii) State water resources agency;
- (iv) State department of agriculture;
- (v) State association of soil and water conservation districts;
- (vi) State soil and water conservation agency;
- (vii) State coastal zone management agency; and

(15) Other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

(b) In addition to agency membership, State Technical Committees shall contain members from the following private interests, including:

- (1) Agricultural producers with demonstrable conservation expertise;
- (2) Nonprofit organizations with demonstrable expertise;
- (3) Persons knowledgeable about economic and environmental impacts of conservation techniques and programs; and
- (4) Agribusiness.

(c) To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist determines membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit to the State Conservationist of that particular State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist of each State chairs the State Technical Committee. State Technical Committees shall provide public notice of meetings that consider issues related to conservation programs. The State Conservationist shall publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7-day minimum where State open meeting laws exist and require a longer notification period. The State Conservationist shall publish this notice in at least one or more newspaper(s), including Tribally-recommended publications, to attain statewide circulation.

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

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations.

(b) The State Technical Committee shall provide, in writing to the implementing USDA program agency, recommendations, data, and technical analyses, which reflect the professional information and judgment of the State Technical Committee. Such information, analyses, and recommendations shall be provided in a manner that will assist in determining matters of fact, technical merit, or scientific question.

(c) The implementing agency reserves the authority to accept or reject the Committee's recommendations; however, the implementing agency shall give strong consideration to the Committee's suggestions.

Signed in Washington, D.C. on November 28, 1997.

Thomas A. Weber,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97-31727 Filed 12-3-97; 8:45 am]

BILLING CODE 3410-16-P

EXPORT-IMPORT BANK OF THE UNITED STATES**12 CFR Parts 404 and 405****Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996**

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed comprehensive revisions of the Export-Import Bank's Freedom of Information Act (FOIA) and Privacy Act regulations. The regulations are intended to supersede the Export-Import Bank's current FOIA and Privacy Act regulations, found at 12 CFR parts 404 and 405, respectively. The Export-Import Bank (Ex-Im Bank) is proposing the following revisions in order to provide more "user-friendly" regulations that are consistent with current law, including the Electronic Freedom of Information Act Amendments of 1996. The proposed regulations also include updated fee schedules.

DATES: Submit comments on or before February 2, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Howard A. Schweitzer, Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW, Room 963, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Howard A. Schweitzer, (202) 565-3229.

SUPPLEMENTARY INFORMATION: This is a comprehensive revision of 12 CFR part 404 (Ex-Im Bank's current FOIA regulations) and 12 CFR part 405 (Ex-Im Bank's current Privacy Act regulations). The proposed part 404 contains Ex-Im Bank's regulations for the FOIA, found in subpart A, and the Privacy Act, found in subpart B. The proposed part 404 does not contain any regulations concerning "appearance and testimony by Ex-Im Bank officers and employees," currently found at 12 CFR 404.8. Ex-Im Bank is removing and reserving part 405 for publication of new regulations entitled "production and disclosure in federal or state proceedings."

The proposed FOIA regulations, in addition to setting forth Ex-Im Bank's basic FOIA policy and procedure, include provisions, found in § 404.7, to implement Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial

Information." The regulations also set forth a revised "schedule of fees," found in § 404.8. The proposed changes include increases in the hourly fees for clerical and professional time to \$16.00 and \$32.00, respectively, and a decrease in duplication charges, from \$.25 to \$.10 per photocopy. New provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231) can be found in § 404.3 (public reference facilities), § 404.5 (time for processing), and § 404.8(d) (material withheld). The proposed regulations also establish, in § 404.11 (administrative appeal), the Ex-Im Bank Assistant General Counsel for Administration as the appellate authority for administrative appeals under the FOIA.

The proposed Privacy Act regulations, set forth Ex-Im Bank's basic Privacy Act policy and procedures. The regulations also include the following provisions concerning matters not previously addressed: § 404.19 (notice of subpoenas and emergency disclosures); § 404.20 (request for accounting of record disclosures); § 404.21 (submission of social security and passport numbers); § 404.22 (contracting record systems); and § 404.26 (employee standards of conduct).

Regulatory Flexibility Act

The Ex-Im Bank President and Chairman, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Under the Privacy Act, agencies may recover only duplication costs. Thus, fees assessed by Ex-Im Bank under these regulations will be nominal. Also, Ex-Im Bank receives, on average, less than two hundred FOIA and Privacy Act requests per year, and only one in four of those requests is made by a small entity.

Certification

In accordance with the Regulatory Flexibility Act, I hereby certify that the proposed Freedom of Information Act and Privacy Act regulations of the Export-Import Bank of the United States will not have a significant economic impact on a substantial number of small entities.

James A. Harmon,
President and Chairman.

Dated: November 20, 1997.