

SUBCHAPTER F—SUPPORT ACTIVITIES

PART 650—COMPLIANCE WITH NEPA

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Subpart A—Procedures for NRCS-Assisted Programs

AUTHORITY: 42 U.S.C. 4321 *et seq.*; Executive Order 11514 (Rev.); 7 CFR 2.62, unless otherwise noted.

SOURCE: 44 FR 50579, Aug. 29, 1979, unless otherwise noted.

§ 650.1 Purpose.

(a) This rule prescribes procedures by which NRCS is to implement the provisions of NEPA. The Natural Resources Conservation Service recognizes NEPA as the national charter for protection, restoration, and enhancement of the human environment. NEPA establishes policy, sets goals (Section 101), and provides means (Section 102) for carrying out this policy.

(b) The procedures included in this rule supplement CEQ's NEPA regula-

tions, 40 CFR parts 1500–1508. CEQ regulations that need no additional elaboration to address NRCS-assisted actions are not repeated in this rule, although the regulations are cited as references. The procedures include some overlap with CEQ regulations. This is done to highlight items of importance for NRCS. This does not supersede the existing body of NEPA regulations.

(c) These procedures provide that—

(1) Environmental information is to be available to citizens before decisions are made about actions that significantly affect the human environment;

(2) NRCS-assisted actions are to be supported to the extent possible by accurate scientific analyses that are technically acceptable to NRCS;

(3) NRCS-prepared NEPA documents are to be available for public scrutiny; and

(4) Documents are to concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

(d) Procedures for implementing NEPA are designed to ensure that environmental consequences are considered in decisionmaking. They allow NRCS to assist individuals and nonfederal public entities to take actions that protect, enhance, and restore environmental quality.

(e) These procedures make possible the early identification of actions that have significant effects on the human environment to avoid delays in decisionmaking.

§ 650.2 Applicability.

This rule applies to all NRCS-assisted programs including the uninstalled parts of approved projects that are not covered by environmental documents prepared under previous rules for compliance with NEPA. It is effective on the date of publication of the final rule. NRCS is to consult with CEQ in the manner prescribed by 40 CFR 1506.11 if it is necessary to take emergency actions.

§ 650.3 Policy.

(a) *NRCS mission.* The NRCS mission is to provide assistance that will allow

use and management of ecological, cultural, natural, physical, social, and economic resources by striving for a balance between use, management, conservation, and preservation of the Nation's natural resource base. The NRCS mission is reemphasized and expanded to carry out the mandate of section 101(b) of NEPA, within other legislative constraints, in all its programs of Federal assistance. NRCS will continue to improve and coordinate its plans, functions, programs, and recommendations on resource use so that Americans, as stewards of the environment for succeeding generations—

(1) Can maintain safe, healthful, productive, and esthetically and culturally pleasing surroundings that support diversity of individual choices; and

(2) Are encouraged to attain the widest range of beneficial uses of soil, water, and related resources without degradation to the environment, risk to health or safety, or other undesirable and unintended consequences.

(b) *NRCS environmental policy.* NRCS is to administer Federal assistance within the following overall environmental policies:

(1) Provide assistance to Americans that will motivate them to maintain equilibrium among their ecological, cultural, natural, physical, social, and economic resources by striving for a balance between conserving and preserving the Nation's natural resource base.

(2) Provide technical and financial assistance through a systematic interdisciplinary approach to planning and decisionmaking to insure a balance between the natural, physical, and social sciences.

(3) Consider environmental quality equal to economic, social, and other factors in decisionmaking.

(4) Insure that plans satisfy identified needs and at the same time minimize adverse effects of planned actions on the human environment through interdisciplinary planning before providing technical and financial assistance.

(5) Counsel with highly qualified and experienced specialists from within and outside NRCS in many technical fields as needed.

(6) Encourage broad public participation in defining environmental quality objectives and needs.

(7) Identify and make provisions for detailed survey, recovery, protection, or preservation of unique cultural resources that otherwise may be irrevocably lost or destroyed by NRCS-assisted project actions, as required by Historic Preservation legislation and/or Executive Order.

(8) Encourage local sponsors to review with interested publics the operation and maintenance programs of completed projects to insure that environmental quality is not degraded.

(9) Advocate the retention of important farmlands and forestlands, prime rangeland, wetlands, or other lands designated by State or local governments. Whenever proposed conversions are caused or encouraged by actions or programs of a Federal agency, licensed by or require approval by a Federal agency, or are inconsistent with local or State government plans, provisions are to be sought to insure that such lands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat, and in some cases, recreation opportunities and controls on urban sprawl.

(10) Advocate actions that reduce the risk of flood loss; minimize effects of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial functions and values of flood plains.

(11) Advocate and assist in the reclamation of abandoned surface-mined lands and in planning for the extraction of coal and other nonrenewable resources to facilitate restoration of the land to its prior productivity as mining is completed.

(12) Advocate the protection of valuable wetlands, threatened and endangered animal and plant species and their habitats, and designated ecosystems.

(13) Advocate the conservation of natural and manmade scenic resources to insure that NRCS-assisted programs

or activities protect and enhance the visual quality of the landscape.

(14) Advocate and assist in actions to preserve and enhance the quality of the Nation's waters.

[44 FR 50579, Aug. 20, 1979, as amended at 44 FR 54981, Sept. 24, 1979]

§ 650.4 Definition of terms.

Definitions of the following terms or phrases appear in 40 CFR part 1508, CEQ regulations. These terms are important in the understanding and implementation of this rule. These definitions are not repeated in the interest of reducing duplication:

Categorical exclusion. (40 CFR 1508.4)

Cooperating agency. (40 CFR 1508.5)

Cumulative impact. (40 CFR 1508.7)

Environmental impact statement (EIS). (40 CFR 1508.11)

Human environment. (40 CFR 1508.14)

Lead agency. (40 CFR 1508.16)

Major Federal action. (40 CFR 1508.18)

Mitigation. (40 CFR 1508.20)

NEPA process. (40 CFR 1508.21)

Scope. (40 CFR 1508.25)

Scoping. (40 CFR 1501.7)

Tiering. (40 CFR 1508.28)

(a) *Channel realignment.* Channel realignment includes the construction of a new channel or a new alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. (Channel Modification Guidelines, 43 FR 8276).

(b) *Environmental assessment (EA).* (40 CFR 1508.9)

(1) An environmental assessment is a concise public document for which a Federal agency is responsible that—

(i) Briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(ii) Aids an agency's compliance with the Act when no environmental impact statement is necessary.

(iii) Facilitates preparation of an environmental impact statement when one is necessary.

(2) An environmental assessment includes brief discussions of the need for the proposal, alternatives as required by section of the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted.

(c) *Environmental evaluation.* The environmental evaluation (EE) (formerly referred to by NRCS as an environmental assessment) is the part of planning that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. A wide range of environmental data together with social and economic information is considered in determining whether a proposed action is a major Federal action significantly affecting the human environment. The environmental evaluation for a program, regulation, or individual action is used to determine the need for an environmental assessment or an environmental impact statement. It also aids in the consideration of alternatives and in the identification of available resources.

(d) *Federally-assisted actions.* These actions are planned and carried out by individuals, groups, or local units of government largely on nonfederal land with technical and/or financial assistance provided by NRCS.

(e) *Interdisciplinary planning.* NRCS uses an interdisciplinary environmental evaluation and planning approach in which specialists and groups having different technical expertise act as a team to jointly evaluate existing and future environmental quality. The interdisciplinary group considers structure and function of natural resource systems, complexity of problems, and the economic, social, and environmental effects of alternative actions. Public participation is an essential part of effective interdisciplinary planning. Even if an NRCS employee provides direct assistance to an individual land user, the basic data used is a result of interdisciplinary development of guide and planning criteria.

(f) *Nonproject actions.* Nonproject actions consist of technical and/or financial assistance provided to an individual, group, or local unit of government by NRCS primarily through a cooperative agreement with a local conservation district, such as land treatment recommended in the Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, and Rural Clean Water Programs. These actions may include consultations, advice, engineering, and other technical

assistance that land users usually cannot accomplish by themselves. Non-project technical and/or financial assistance may result in the land user installing field terraces, waterways, field leveling, onfarm drainage systems, farm ponds, pasture management, conservation tillage, critical area stabilization and other conservation practices.

(g) *Notice of intent (NOI)* (40 CFR 1508.22). A notice of intent is a brief statement inviting public reaction to the decision by the responsible Federal official to prepare an EIS for a major Federal action. The notice of intent is to be published in the FEDERAL REGISTER, circulated to interested agencies, groups, individuals, and published in one or more newspapers serving the area of the proposed action.

(h) *Project actions*. A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having the legal authority and resources to install, operate, and/or maintain works of improvement.

(i) *Record of Decision*. (ROD) (40 CFR 1505.2). A record of decision is a concise written rationale by the RFO regarding implementation of a proposed action requiring an environmental impact statement. This was previously defined by NRCS as a Statement of Findings (SOF).

(j) *Responsible Federal official (RFO)*. The NRCS Administrator is the responsible Federal official (RFO) for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. NRCS state conservationists (STC's) are the RFO's for compliance with the provisions of NEPA in other NRCS-assisted actions.

(k) *Significantly*. (40 CFR 1508.27) "Significantly" as used in NEPA requires considerations of both context and intensity:

(1) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, for a site-specific action, sig-

nificance usually depends on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(2) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action.

The following should be considered in evaluating intensity:

(i) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(ii) The degree to which the proposed action affects public health or safety.

(iii) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(iv) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(v) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(vi) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(vii) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(viii) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(ix) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical

under the Endangered Species Act of 1973 as amended.

(x) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

(1) *Finding of no significant impact (FNSI)*. (40 CFR 1508.13) “Finding of No Significant Impact” means a document by a Federal agency briefly presenting the reasons why an action not otherwise excluded (§1508.4) will not have a significant effect on the human environment, and an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

[44 FR 50579, Aug. 29, 1979, as amended at 44 FR 54981, Sept. 24, 1979]

§ 650.5 Environmental evaluation in planning.

(a) *General*. Environmental evaluation (EE) integrates environmental concerns throughout the planning, installation, and operation of NRCS-assisted projects. The EE applies to all assistance provided by NRCS, but planning intensity, public involvement, and documentation of actions vary according to the scope of the action. NRCS begins consideration of environmental

concerns when information gathered during the environmental evaluation is used:

(1) To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;

(2) To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;

(3) To assist in the development of alternative courses of action; (40 CFR 1502.14). In NRCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are considered, if appropriate.

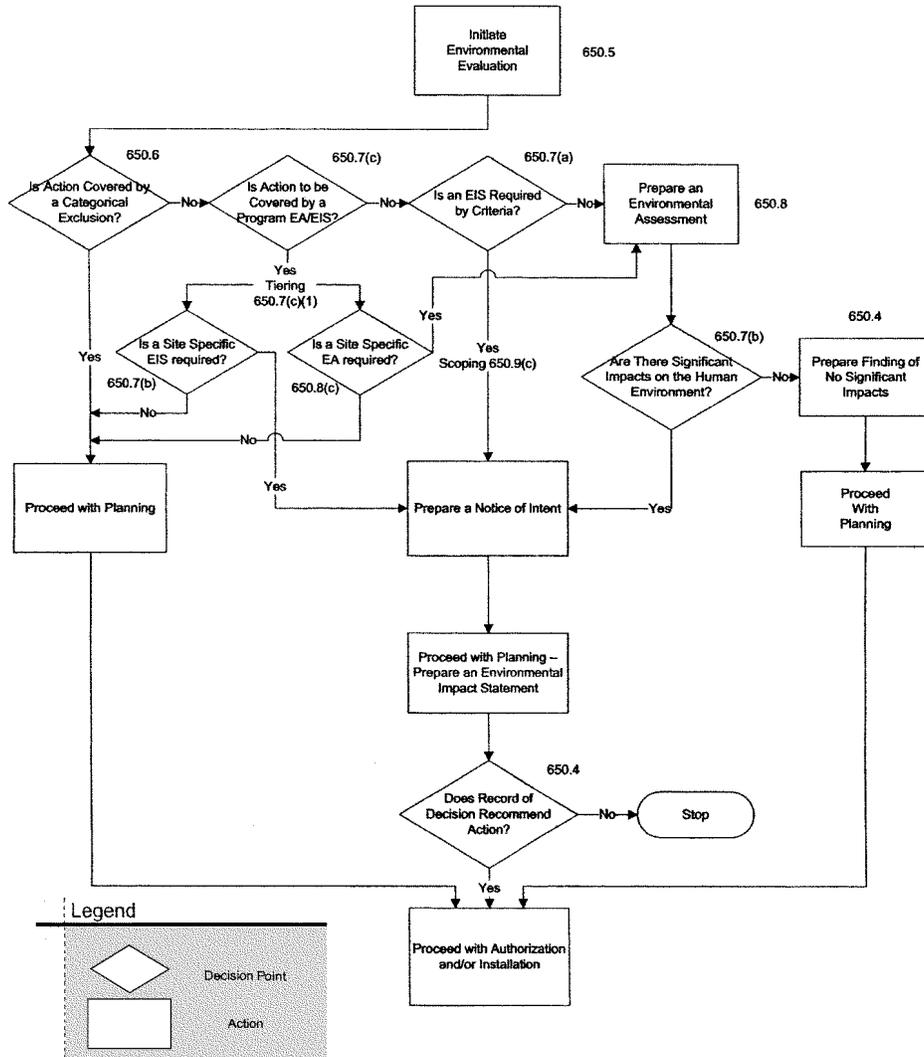
(4) To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.

(5) To assist in the development of detailed plans for implementation and operation and maintenance.

(b) *Procedures*. NRCS's Guide for Environmental Assessment issued in March 1977 and published in the FEDERAL REGISTER on August 8, 1977, provides guidance for conducting an environmental evaluation. (42 FR 40123-40167).

(c) *Decision points*. Figure 1 illustrates the decision points for compliance with NEPA in NRCS decision-making.

NEPA in NRCS Planning



[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35884, June 25, 2008]

§ 650.6 Categorical exclusions.

(a) Some NRCS programs or parts of programs do not normally create significant individual or cumulative impacts on the human environment. Therefore, an EA or EIS is not needed.

These are data gathering and interpretation programs and include:

- (1) Soil Survey—7 CFR part 611;
- (2) Snow Survey and Water Supply Forecasts—7 CFR part 612;
- (3) Plant Materials for Conservation—7 CFR part 613;

(4) Inventory and Monitoring—Catalog of Federal Domestic Assistance—10.908; and

(5) River Basin Studies under section 6 of Pub. L. 83-566 as amended—7 CFR part 621.

(b) When any new action is planned under the programs identified in paragraph (a) of this section, the EE performed by the RFO is to identify extraordinary circumstances that might lead to significant individual or cumulative impacts. Actions that have potential for significant impacts on the human environment are not categorically excluded.

(c)(1) The NRCS restoration and conservation actions and activities identified in paragraph (d) of this section are eligible for categorical exclusion and require the RFO to document a determination that a categorical exclusion applies. Agency personnel will use the EE review process detailed in §650.5 to evaluate proposed activities for extraordinary circumstances and document the determination that the categorical exclusion applies. The extraordinary circumstances address the significance criteria provided in 40 CFR 1508.27.

(2) The extraordinary circumstances identified in paragraph (c)(1) of this section include:

(i) The proposed action cannot cause significant effects on public health or safety.

(ii) The proposed action cannot significantly affect unique characteristics of the geographic area such as proximity to historic properties or cultural resources, park lands, prime farmlands, floodplains, wetlands, wild and scenic rivers, or ecologically critical areas.

(iii) The effects of the proposed action on the quality of the human environment cannot be highly controversial.

(iv) The proposed action cannot have highly uncertain effects, including potential unique or unknown risks on the human environment.

(v) The proposed action cannot include activities or conservation practices that establish a potential precedent for future actions with significant impacts.

(vi) The proposed action is known to have or reasonably cannot be expected

to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time.

(vii) The proposed action cannot cause or promote the introduction of invasive species or have a significant adverse effect on any of the following special environmental concerns not previously identified in paragraph (c)(2)(B) of this section, such as: endangered and threatened species, environmental justice communities as defined in Executive Order 12898, wetlands, other waters of the United States, wild and scenic rivers, air quality, migratory birds, and bald and golden eagles.

(viii) The proposed action will not violate Federal or other applicable law and requirements for the protection of the environment.

(3) In the absence of any extraordinary circumstances as determined through NRCS' EE review process, the activities will be able to proceed without preparation of an EA or EIS. Where extraordinary circumstances are determined to exist, the categorical exclusion will not apply, and the appropriate documentation for compliance with NEPA will be prepared. Prior to determining that a proposed action is categorically excluded under paragraph (d) of this section, the proposed action must:

(i) Be designed to mitigate soil erosion, sedimentation, and downstream flooding;

(ii) Require disturbed areas to be vegetated with adapted species that are neither invasive nor noxious;

(iii) Be based on current Federal principals of natural stream dynamics and processes, such as those presented in the Federal Interagency Stream Corridor Restoration Working Group document, "Stream Corridor Restoration, Principles, Processes, and Practices;"

(iv) Incorporate the applicable NRCS conservation practice standards as found in the Field Office Technical Guide;

(v) Not require substantial dredging, excavation, or placement of fill; and

(vi) Not involve a significant risk of exposure to toxic or hazardous substances.

(d) The use of the following categorical exclusions for a proposed action

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does not waive NRCS compliance with any applicable legal requirement including, but not limited to, the National Historical Preservation Act or the Endangered Species Act. The following categorical exclusions are available for application to proposed actions provided the conditions described in paragraph (c) of this section are met:

(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services;

(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances;

(3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable;

(4) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required;

(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes;

(6) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety;

(7) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition;

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(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, *e.g.*, utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods);

(9) Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances;

(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures;

(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition;

(12) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration;

(13) Repairing, maintaining, or installing fish screens to existing structures;

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result;

(15) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to

NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result;

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas;

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls;

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards;

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes;

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting; and

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

[44 FR 50579, Aug. 29, 1979, as amended at 74 FR 33322, July 13, 2009; 75 FR 6556, Feb. 10, 2010]

§ 650.7 When to prepare an EIS.

The following are categories of NRCS action used to determine whether or not an EIS is to be prepared.

(a) *An EIS is required for:*

(1) Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The EE will determine if the channel supports significant aquatic or wildlife habitat;

(2) Projects requiring Congressional action;

(3) Broad Federal assistance programs administered by NRCS when the environmental evaluation indicates there may be significant cumulative impacts on the human environment (§650.7(e)); and

(4) Other major Federal actions that are determined after environmental evaluation to affect significantly the quality of the human environment (§650.7(b)). If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to complete the EE and prepare an EA in order to decide if an EIS is required.

(b) The RFO is to determine the need for an EIS for each action, program, or regulation. An environmental evaluation, using a systematic interdisciplinary analysis and evaluation of data and information responding to the five provisions of Section 102(2)(C) of NEPA, will assist the RFO in deciding if the action requires the preparation of an EIS. In analyzing and evaluating environmental concerns, the RFO will answer the following questions:

(1) *Environmental impact.* Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14)? For example, will it significantly alter or destroy valuable

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wetlands, important farmlands, cultural resources, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?

(2) *Adverse environmental effects that cannot be avoided.* What are the important environmental amenities that would be lost if the proposed action were implemented?

(3) *Alternatives.* Are there alternatives that would achieve the planning objectives but avoid adverse environmental effects?

(4) *Short-term uses versus long-term productivity.* Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a tradeoff for short-term uses?

(5) *Commitment of resources.* Will the proposed action irreversibly and irretrievably commit the use of resources such as important farmlands, wetlands, and fish and wildlife habitat?

(c) Criteria for determining the need for a program EIS:

(1) A program EIS is required if the environmental evaluation reveals that actions carried out under the program have individually insignificant but cumulatively significant environmental impacts.

(2) A project EIS, in lieu of a program EIS, is required if the environmental evaluation reveals that actions carried out under the program will have both individually and cumulatively significant environmental impacts. (7 CFR Parts 620 through 623 and 640 through 643).

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an individually significant action that is included in a program EIS.

§ 650.8 When to prepare an environmental assessment (EA).

An environmental assessment (EA) is to be prepared for:

(a) Land and water resource projects that are not included in § 650.7(a) (1) through (4) for which State and local units of government receive Federal technical and financial assistance from NRCS (7 CFR parts 620 through 623; and 640 through 643); and

(b) Other actions that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

(c) Criteria for determining the need for a program EA:

(1) A program EA is to be prepared when NRCS has determined, based on the environmental evaluation, that a program EIS is not required and the program and actions to implement the program are not categorically excluded; and

(2) A program EA may also be prepared to aid in NRCS decision-making and to aid in compliance with NEPA.

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an action that is included in a program EA or EIS.

[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35886, June 25, 2008]

§ 650.9 NEPA and interagency planning.

(a) *Lead agency.* (1) NRCS is to be the lead agency for actions under programs it administers. If the actions affect more than one State, the NRCS Administrator is to designate one NRCS state conservationist as the RFO.

(2) NRCS normally takes the role of lead agency in actions that share program responsibilities among USDA agencies if NRCS provides the majority of funds for the actions. If the lead agency role is in question, the role of NRCS and other USDA agencies is to be determined by the USDA Environmental Coordinator, Office of Environmental Quality Activities.

(3) If NRCS and Federal agencies outside USDA cannot agree on which will be the lead agency and which will be the cooperating agencies, the procedures in 40 CFR 1501.5(e) are to be followed.

(4) NRCS, as lead agency, is to coordinate the participation of all concerned agencies in developing the EIS according to the provisions of 40 CFR 1501.6(a).

(b) *Cooperating agencies.* (1) NRCS is to request, as appropriate, the assistance of cooperating agencies in preparing the environmental evaluation. This assistance will broaden the expertise in the planning and help to avoid

future conflict. NRCS is to request assistance in determining the scope of issues to be addressed and identifying the significant issues related to a proposed action from Federal agencies that have jurisdiction by law or special expertise.

(2) NRCS is to act as a cooperating agency if requested. NRCS may request to be designated as a cooperating agency if proposed actions may affect areas of NRCS expertise, such as prime farmlands, soils, erosion control, and agricultural sources of nonpoint pollution. NRCS, as a cooperating agency, is to comply with the requirements of 40 CFR 1501.6(b) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent NRCS from participating fully as a cooperating agency, NRCS is to request the lead agency to provide funds or other resources which will allow full participation.

(c) *Scoping*. See 40 CFR 1501.7 for a definition of scoping.

(1) NRCS is to use scoping to identify and categorize significant environmental issues in its environmental evaluation. Formalized scoping is used to insure that an analytical EIS can be prepared that will reduce paperwork and avoid delay. Scoping allows NRCS to obtain the assistance and consultation of affected agencies that have special expertise or legal jurisdiction in the proposed action. If early environmental evaluation identifies a need for an EIS, NRCS is to publish a notice of intent (NOI) to prepare an EIS. The NOI is to request the assistance of all interested agencies, groups, and persons in determining the scope of the evaluation of the proposed action.

(2) Normally a scoping meeting is held and Federal, State, or local agencies that have special expertise or legal jurisdiction in resource values that may be significantly affected are requested to participate. The scoping meeting will identify agencies that may become cooperating agencies.

(3) In the scoping meeting, the range of actions, alternatives, and impacts to be evaluated and included in the EIS as defined in (40 CFR 1508.25) are to be determined. Tiering (40 CFR 1508.28) may be used to define the relation of the

proposed statement to other statements.

(4) Periodic meetings of the cooperating agencies are to be held at important decisionmaking points to provide timely interagency, interdisciplinary participation.

(5) Scoping is to include the items listed in 40 CFR 1501.7(a) and may also include any of the activities in 40 CFR 1501.7(b). Appropriate, timely requests and notification are to be made to promote public participation in scoping in accordance with paragraph (d) of this section.

(6) The RFO through the scoping process will set time and page limits as prescribed in 40 CFR 1501.8. Time and page limits are established by NRCS in consultation with sponsors and others according to the projected availability of resources. The RFO is to make the applicant aware of the possible need for revising time and page limits because of changes in resources.

(d) *Public participation*—(1) *General*. Public participation activities begin early in the EE and are to be appropriate to the proposed action. For example, extensive public participation activities are required in the implementation of new programs and project actions, but limited public participation is appropriate for nonproject technical and financial assistance programs on nonfederal land.

(2) *Early public involvement*. The public is to be invited and encouraged to participate in the early stages of planning, including the consideration of the potential effects of NRCS-assisted actions on significant environmental resources such as wetlands, flood plains, cultural values, endangered species, important farmland.

(3) *Project activities*. The following are general considerations for providing opportunities for public participation:

(i) *Identification of interested public*. The interested public consisting of but not limited to individuals, groups, organizations, and government agencies are to be identified, sought out, and encouraged to participate in and contribute to interdisciplinary planning and environmental evaluation.

(ii) *Public notices*. (40 CFR 1506.6) If the effects of an action are primarily of local concern, notice of each public

meeting or hearing should be: Submitted to State and areawide clearing-houses pursuant to OMB Circular A-95 (revised); submitted to Indian tribes if they are interested; published in local newspapers; distributed through other local media; provided to potentially interested community organizations including small business associations; published in newsletters that may be expected to reach potentially interested persons; mailed directly to owners and occupants of nearby or affected property; and posted onsite and offsite in the area where the action is to be located.

(iii) *State statutes.* If official action by the local units of government cooperating in the proposal is governed by State statute, the public notice and mailing requirement of the statute is to be followed. If the effects of an action are of national concern, notice is to be published in the FEDERAL REGISTER and mailed to national organizations reasonably expected to be interested.

(iv) *Public meetings.* The RFO, after consultation with the sponsors, is to determine when public meetings or hearings are to be held. Public meetings may be in the form of a workshop, tour, open house, etc. Public involvement will include early discussion of flood-plain management and protection of wetlands, where appropriate. Environmental information is to be presented and discussed along with other appropriate information. To the extent practical, pertinent information should be made available before the meetings.

(v) *Documentation.* The RFO is to maintain a reviewable record of public participation in the environmental evaluation process.

(4) *Nonproject activities.* Public participation in the planning and application of conservation practices with individual land users is accomplished primarily through conservation districts. These districts are governed by boards of supervisors directors, commissioners, etc., who are elected and/or appointed to insure that soil, water, related resources, and environmental qualities in the district are maintained and improved. The public is to be encouraged to participate in the development of long-range district programs

and district annual plans. The district keeps the public informed through public meetings, district newsletters, news stories, radio and television programs, and annual reports.

§ 650.10 Adoption of an EIS prepared by a cooperating agency.

(a) If NRCS adopts an EIS prepared by another Federal or State agency, the RFO is to review the document to insure that it meets the requirements of the CEQ regulations and NRCS-NEPA procedures.

(b) If the actions included in the EIS are substantially the same as those proposed by NRCS, the RFO is to recirculate the EIS as "final." The final EIS is to include an appropriate explanation of the action. If these actions are not substantially the same, the EIS is to be supplemented and recirculated as a draft EIS. The RFO is to inform the preparing agency of the proposed action.

(c) If the adopted EIS is not final, if it is the subject of a referral under 40 CFR part 1504, or if the statement's adequacy is in litigation, the RFO is to include an appropriate explanation in the EIS.

(d) The RFO is to take appropriate action to inform the public and appropriate agencies of the proposed action.

§ 650.11 Environmental documents.

(a) NRCS is to use the following documents in compliance with NEPA (see § 650.4):

- (1) Environmental assessments (EA)
- (2) Environmental impact statements (EIS)
- (3) Notice of intent (NOI)
- (4) Finding of no significant impact (FNSI)
- (5) Record of decision (ROD)

(b) The format and content of each document is to be appropriate to the action being considered and consistent with the CEQ regulations.

(1) To reduce duplication, NRCS may combine environmental documents with other planning documents of the same proposal, as appropriate. For example, NRCS, in consultation with CEQ and the office of the Secretary of Agriculture, has determined that each EIS is to satisfy the requirements for a regulatory impact analysis as required

by Executive Order 12044. This may necessitate modifying the recommended CEQ format. If documents are combined, the RFO is to include the information and sections required by the CEQ regulations (40 CFR 1502.10). The environmental impact statement should indicate those considerations, including factors not related to environmental quality, that are likely to be relevant to a decision.

(2) The RFO is to establish the format and content of each document giving full consideration to the guidance and requirements of the CEQ regulations. The NRCS technical service center director is to provide guidance and concurrence on the format and content if the NRCS state conservationist is the RFO. The results of scoping are to determine the content of the EA or the EIS and the amount of detail needed to analyze the impacts.

(3) In addition to the minimum requirements of the CEQ regulations (40 CFR 1502.10), environmental assessments and environmental impact statements are to include—

(i) A brief description of public participation activities of agencies, groups, and individuals during the environmental evaluation;

(ii) A description of the hazard potential of each alternative, including an explanation of the rationale for dam classification and the risk of dam failure from overtopping for other causes;

(iii) Information identifying any approved regional plans for water resource management in the study area (40 CFR 1506.2(d)) and a statement on whether the proposed project is consistent with such plans;

(iv) All Federal permits, licenses, and other entitlements that must be obtained (40 CFR 1502.25(b)); and

(v) A brief description of major environmental problems, conflicts, and disagreements among groups and agencies and how they were resolved. Unresolved conflicts and the NRCS's proposal for resolving the disagreements before the project is implemented are to be summarized.

(4) *Letters of comment and responses.* (40 CFR 1503.4, 1502.9(b)) Letters of comment that were received and the responses to these comments are to be appended to the final EIS. Opposing views

and other substantive comments that were not adequately discussed in the draft EIS are to be incorporated in the final EIS.

(5) *Appendix.* The RFO may use an appendix to an EA or EIS. If an appendix is too voluminous to be circulated with the EIS, the RFO is to make it available on request. If an appendix is included it is to—

(i) Meet the requirements of 40 CFR 1502.18;

(ii) Identify any methodologies used (40 CFR 1502.24) and make explicit reference to other sources relied on for conclusions; and

(iii) Briefly describe the relationship between the benefit-cost analysis and any analyses of unquantified environmental impacts, values, and amenities. “For purposes of complying with the Act, *the weighing of the merits or drawbacks of the various alternatives need not be displayed* in a monetary cost benefit and should not be when these are important qualitative considerations.” (40 CFR 1502.23).

§ 650.12 NRCS decisionmaking.

(a) *General.* The purpose of these procedures is to insure that environmental information is provided to decision makers in a timely manner. The NEPA process is a part of NRCS decisionmaking. The RFO is to insure that the policies and purposes of NEPA and CEQ regulations are complied with in NRCS decisionmaking by:

(1) Including in all decision documents and supporting environmental documents a discussion of all alternatives considered in the decision. Alternatives to be considered in reaching a decision will be available to the public.

(2) Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.

(3) Including in the record of formal rulemaking or adjudicatory proceedings relevant environmental documents, comments and responses.

(4) Providing for pre- and post-project monitoring (40 CFR 1505.2(c), 1505.3) and evaluation in representative projects to insure that planning and evaluation procedures are performed according to sound criteria.

(b) *Decision points in NRCS-assisted projects.* NRCS administers programs that may have a significant effect on the human environment. Program procedures incorporate provisions for compliance with NEPA and for providing environmental information to the public, other agencies, and decision makers in a timely manner. NRCS provides technical and financial assistance for projects under the Watershed Protection and Flood Prevention and the Resource Conservation and Development (RC&D) programs. These usually require the preparation of project EA's or EIS's. The major decisionmaking points and their relation to NEPA compliance are as follows:

(1) For Watershed Protection and Flood Prevention projects:

(i) Application for assistance by the sponsoring local organization (SLO).

(ii) A preauthorization report identifying goals, alternatives, and effects of alternatives (including environmental impacts) prepared by the RFO and submitted to the applicant for decision. It is circulated to local, State, and Federal agencies and public comment is solicited. A decision is made to stop planning assistance or to develop a watershed plan.

(iii) Granting of planning authorization by the Administrator. The RFO must provide an evaluation of the potential environmental impacts to obtain the authorization.

(iv) A watershed agreement between the SLO and NRCS. The agreement is based on a completed watershed plan and associated environmental documents, which have been adequately reviewed within NRCS.

(v) A project agreement between the SLO and the RFO executed after the NEPA process is complete and the watershed plan has been approved and final plans and specifications have been developed.

(2) For RC&D measure plans:

(i) A request for assistance (measure proposal) is reviewed by the RC&D council to insure that the proposal is in accordance with the RC&D area plan. The proposal is then referred to NRCS.

(ii) A preliminary report is prepared by the RFO to identify goals, alternatives, and effects (including environ-

mental impacts). The report is submitted to the sponsor for review. The sponsor may then apply to NRCS for planning assistance for measures considered in the preliminary report.

(iii) An authorization for planning assistance is granted by the RFO.

(iv) The RC&D measure plan is signed by the applicant and the RFO after the preparation and review of the measure plan and environmental documents.

(v) A project agreement is signed between the applicant and the RFO after the NEPA process is complete, and the measure plan has been approved, and final plans and specifications have been prepared.

(c) *Environmental Impact Statement (EIS) and Record of decision.* The RFO is to prepare a concise record of decision (ROD) for actions requiring an EIS. The record of decision is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the final EIS in the FEDERAL REGISTER. It is to serve as the public record of decision as described in 40 CFR 1505.2 of the CEQ regulations. The ROD is to be distributed to all who provided substantive comments on the draft EIS and all others who request it. A notice of availability of the ROD will be published in the FEDERAL REGISTER and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

(d) *Environmental Assessments and Finding of No Significant Impact (FNSI)*—(1) EA's. If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a finding of no significant impact (FNSI).

(2) *Availability of the FNSI (40 CFR 1501.4(e)(2)).* In accordance with CEQ regulations at 40 CFR 1501.4(e)(2), NRCS shall make the EA/FNSI available for public review for thirty days in the following instances: The proposed action is, or closely similar to, one which normally requires the preparation of an EIS as defined by NRCS NEPA implementing regulations at § 650.7, or the nature of the action is one without precedent. When availability for public review for thirty days

is not required, NRCS will involve the public in the preparation of the EA/FONSI and make the EA/FONSI available for public review in accordance with CEQ regulations at 40 CFR 1501.4(b) and 1506.6.

(e) *Changes in actions.* When it appears that a project or other action needs to be changed, the RFO will perform an environmental evaluation of the authorized action to determine whether a supplemental NEPA analysis is necessary before making a change.

[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35886, June 25, 2008]

§ 650.13 Review and comment.

In addition to the requirements of 40 CFR 1503, 1506.10 and 1506.11, NRCS will take the following steps in distributing EIS's for review and comment:

(a) *Draft EIS's.* Five copies of the draft EIS are to be filed by the RFO with the Office of Environmental Review, A-104, Environmental Protection Agency (EPA), Washington, D.C. At the same time, the RFO is to send copies of the draft EIS to the following:

(1) *Other Federal agencies.* The regional office of EPA and other agencies that have jurisdiction by law or special expertise with respect to any environmental effect, other Federal agencies (including appropriate field and regional offices), and affected Indian tribes.

(2) *State and local agencies.* OMB Circular No. A-95 (Revised), through its system of State and areawide clearinghouses, provides a means for obtaining the views of State and local environmental agencies that can assist in the preparation and review of EIS's

(3) *Organizations, groups, and individuals.* A copy of the draft EIS is to be sent to the appropriate official of each organization or group and each individual of the interested public (§650.9(d)(3)(i)) and to others as requested. A charge may be made for multiple copy requests.

(b) *Time period for comment.* The time period for review ends 45 days after the date EPA publishes the notice of public availability of the draft in the FEDERAL REGISTER. A 15-day-extension of time for review and comment is to be considered by the RFO when such requests are submitted in writing. If nei-

ther comments nor a request for an extension is received at the end of the 45-day period, it is to be presumed that the agency or party from whom comments were requested has no comments to make.

(c) *News releases.* In addition to the notice of availability published in the FEDERAL REGISTER by EPA, the RFO is to announce the availability of the draft EIS in one or more newspapers serving the area.

(d) *Revising a draft EIS.* If significant changes in the proposed action are made as a result of comments on the draft EIS, a revised draft EIS may be necessary. The revised draft EIS is to be recirculated for comment in the same manner as a draft EIS.

(e) *Final EIS's.* After the review period for the draft EIS, the RFO is to prepare a final EIS, making adjustments where necessary by taking into consideration and responding to significant comments and opposing viewpoints received on the draft EIS. The following steps are to be taken in filing and distributing the final EIS:

(1) Letters of comment are to be appended to the final EIS. If numerous repetitive responses are received, summaries of the repetitive comments and a list of the groups or individuals who commented may be appended in lieu of the actual letter.

(2) The RFO is to send five copies of the final EIS to EPA's Office of Environmental Review, and a copy of the final EIS to each State and Federal agency, organization, group, and individual who commented on the draft EIS. Single copy requests for copies of the final EIS will be provided without charge. A charge may be made for multiple copy requests.

(3) During the 30-day administrative action period noted in §650.12(c), NRCS will make its final EIS available to the public (40 CFR 1506.10).

(f) *Supplements to EIS's.* (1) If NRCS determines that it is necessary to clarify or amplify a point of concern raised after the final EIS is filed, appropriate clarification or amplification is to be sent to EPA with information copies furnished to those who received copies of the final EIS. The waiting periods do not apply.

(2) If the RFO determines that the final EIS or supplement to the original EIS previously filed becomes inadequate because of a major change in the plan for the proposed action that significantly affects the quality of the human environment, a new EIS is to be prepared, filed, and distributed as described in this section.

Subpart B—Related Environmental Concerns

AUTHORITY: Pub. L. 86–523, 74 Stat. 220 as amended, Pub. L. 93–291, 88 Stat. 174 (16 U.S.C. 469); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 93–205, 87 Stat. 884 (16 U.S.C. 1531 et seq.); Secretary of Agriculture Memorandum 1695, May 28, 1970; 42 U.S.C. 4332(2)(C); E.O. 11514, 16 U.S.C. 1001–1008; 7 U.S.C. 1010–1011; 16 U.S.C. 590 a–f, q; 7 CFR 2.62.

SOURCE: 39 FR 43993, Dec. 20, 1974, unless otherwise noted.

§ 650.20 Reviewing and commenting on EIS's prepared by other agencies.

(a) *NRCS employees assigned to review and comment on EIS's prepared by other agencies are to be familiar with NRCS policies and guidelines contained in this part, and NEPA.*

(b) *EIS's received for review by NRCS for which NRCS has expertise or interest shall be responded to promptly. Comments are to be objective with the intent to offer suggestions to help minimize adverse impacts of the proposed action to ensure the health and welfare of the agricultural community. Comments are to be based on knowledge readily available. Field office technical guides, soil surveys, field investigation reports, and other resource data and reference materials developed by NRCS and other agencies should be used and cited. It is not intended that special surveys or investigations be conducted to acquire additional information for use in preparing comments.*

(c) *The NRCS reviewer should consider the following kinds of concerns—(1) The suitability or limitations of the soils for the proposed action. Would an alternative route, location, or layout minimize land use problems and adverse environmental impacts?*

(2) *Provisions for control of erosion and management of water during construction. Are there resources downstream that would be affected by sediment from the construction area, and does the statement provide for adequate control measures? Will lack of erosion control cause air pollution? Is the stockpiling of topsoil for future use considered in the EIS?*

(3) *Provisions for soil and water conservation management measures on project lands, rights-of-way, access roads, and borrow areas. Does the statement indicate that enduring soil and water practices are to be installed and maintained?*

(4) *The effect of water discharges from project lands or rights-of-way onto other properties. Will discharges cause erosion or flooding on other lands? Will discharges affect water quality?*

(5) *The effects of disruption of the natural drainage patterns and severance of private land units. Does the statement indicate that natural drainage patterns will be maintained? Will bridges, culverts, and other water control structures be located to ensure that adjacent lands are not flooded or otherwise restricted in use? Does the EIS describe the effects of severance on private land ownerships?*

(6) *The impact on existing soil and water conservation management systems. To what extent will conservation systems be altered, severed, or suffer blocked outlets? Will land use or cover be affected?*

(7) *Impacts on prime and unique farmland. Would an alternative location or route require less prime farmland? Does the EIS consider secondary effects on prime farmland? What benefits are foregone if prime farmland is taken?*

(8) *Impacts on ecosystems. Does the EIS describe impacts on major plant communities, and terrestrial and aquatic ecosystems?*

(9) *Impacts on NRCS-assisted projects. Does the statement reflect the effect of the proposed action on present or planned NRCS assisted projects?*

(d) *EIS's referred to NRCS for departmental comments. EIS's referred by the USDA Coordinator for Environmental Quality Activities to the NRCS national office may designate NRCS as*

the lead agency for preparing comments for USDA. In this case, the NRCS national office determines whether inputs from STC's and other USDA agencies are needed. If so, STC's and other USDA agencies are requested to forward comments to the Environmental Services Division for use in preparing the USDA response.

(e) *EIS's referred to NRCS for agency comments.* EIS's received by the NRCS national office are screened by the Director, Environmental Services Division to determine which office within NRCS will prepare comments. If the proposed action is within one State, the draft EIS will be forwarded to the appropriate STC and he will reply directly to the agency requesting the comments. If the proposed action involves more than one State, one STC will be designated to forward NRCS comments directly to the agency requesting the comments. In some cases, the action may be national or regional in scope, and require inputs from several offices within NRCS. In this instance, comments will be assembled in the Environmental Services Division for preparation of a response to the agency requesting comments. A copy of each response prepared by a STC should be sent to the Director, Environmental Services Division.

(f) *EIS's sent to NRCS offices other than the national office.* If a STC receives an EIS from another agency, he is to respond to the initiating agency. A copy of his comments should be sent to the Director, Environmental Services Division.

(1) *EIS's addressed to NRCS area or field offices.* If an EIS is received by a field or area office of NRCS, the STC will coordinate the response.

(2) *EIS's submitted to conservation districts.* NRCS may furnish needed soil, water, and related resource information to the district for their use in preparing comments.

(g) *Distribution of NRCS comments on other agencies' draft EIS's.* Five copies of review comments made by NRCS on draft EIS's prepared by other Federal agencies are to be sent to CEQ.

(h) *Third party requests for a copy of NRCS comments on another agency's EIS* will be filled after NRCS has forwarded

copies of its letter of comments to CEQ.

[42 FR 40118, Aug. 8, 1977]

§ 650.21 Working relations with the U.S. Environmental Protection Agency (EPA) and related State environmental agencies.

(a) *Background.* The authorities and missions of NRCS, EPA, and state environmental agencies make it imperative that an effective cooperative and coordinative working relationship be developed and maintained in areas of mutual concern. These common areas include air quality, water quality, pesticides, waste recycling and disposal, environmental considerations in land use, Environmental Impact Statements (EIS's) and environmental considerations in the conservation and development of natural resources.

(b) *Policy.* NRCS will work closely with EPA in accordance with the provisions of the EPA-USDA Memorandum of Understanding July 31, 1974, at all administrative levels and with related state agencies to meet statutory requirements and to achieve harmonious implementation of all actions of mutual concern directed to improving or maintaining the quality of the environment.

(c) *Responsibility*—(1) *NRCS national office.* The Deputy Administrator for Field Services is responsible for overall coordination with EPA at the national office level. The Deputy Administrator for Water Resources is responsible for contacts with EPA in relation to activities of the Water Resources Council on water and related land resource planning and for coordinating work with EPA on EIS development.

(2) *Technical service center.* The TSC director is responsible for contacts and coordination with EPA regional offices within the group of states served by the TSC.

(3) *NRCS state office.* The state conservationist is responsible for contacts and coordination with regional representatives of EPA and state environmental agencies in matters of mutual concern within his state.

(d) *Coordination and implementation.* (1) The NRCS national office will:

(i) Within the framework of USDA agreements and guidelines, develop

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agreements for undertaking specific activities or projects of national significance and mutual advantage.

(ii) Assist EPA as requested in developing EPA policy, guidelines, and standards.

(iii) Consider EPA needs in soil survey and land, inventory, and monitoring activities.

(iv) Maintain needed liaison and develop mutual guidelines with EPA on water resources work and in coordinating EIS's.

(v) Advise EPA regarding soils, plant materials, and soil and water conservation techniques.

(vi) Establish procedures for periodic review of NRCS national standards for treatment systems and practices for agricultural pollution abatement, including wind and water erosion and sediment control, transport of pesticides, organic matter and fertilizers, and burning of residues or clearing debris.

(2) The TSC director will:

(i) Within the framework of NRCS memorandums and guidelines coordinate with the EPA regional administrator(s) the development of needed agreements for undertaking specific activities or projects of multistate significance and mutual advantage.

(3) The state conservationist will:

(i) Obtain early input of EPA and interested state and local environmental agencies in the planning process for projects or measures within the state impacting on the environment.

(ii) Coordinate preparations of NRCS practice standards and procedures for agricultural pollution abatement within the state with EPA and related state agencies.

(iii) Encourage the development of a coordinated review and approval process within the state with EPA and appropriate state and local agencies including conservation districts for actions of mutual concern.

(iv) Attempt to resolve all EPA areas of concern on NRCS assisted project-type actions within the state before a final EIS is prepared.

§ 650.22 Rare, threatened, and endangered species of plants and animals.

(a) *Background.* (1) A variety of plant and animal species of the United States

are so reduced in numbers that they are threatened with extinction. The disappearance of any of these would be a biological, cultural, and in some instances an economic loss. Their existence contributes to scientific knowledge and understanding, and their presence adds interest and variety to life.

(2) The principal hazard to threatened and endangered species is the destruction or deterioration of their habitats by human activities such as industrialization, urbanization, agriculture, lumbering, recreation, and transportation. These activities of man will continue but the necessity of recognizing their adverse impacts and selecting alternatives that minimize or eliminate such impacts on threatened and endangered species is imperative.

(3) The Endangered Species Act of 1973 (Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*)) provides a means whereby the ecosystems upon which endangered and threatened species depend may be maintained and a program for the conservation of such species. The Act also provides that, in addition to the Department of the Interior, "All other federal departments and agencies shall, in consultation with and with the assistance of the Secretary (of Interior), utilize their authorities for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected states, to be critical." The Act also:

(i) Defines endangered species as any species in danger of extinction throughout all or a significant portion of its range and threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act uses the category "threatened." The term "rare" is not used.

(ii) Further defines species as including any subspecies of fish or wildlife or plants and any other group of fish and

wildlife of the same species or smaller taxa in common spatial arrangements that interbreed when mature.

(iii) Provides for the Secretary of the Interior to enter into cooperative agreements with states for the purpose of implementing state programs for the conservation of endangered and threatened fish and wildlife. This assistance may include financial grants.

(iv) Provides national lists of endangered and threatened animal and plant species to be maintained by the Secretary of the Interior and published in the FEDERAL REGISTER. When resident fish and wildlife are added to the list, the affected states are to be consulted by the Secretary. The Secretary of the Smithsonian Institution is preparing a list of endangered or threatened plant species.

(b) *Policy.* The Act gives NRCS additional direction for participation in the conservation and protection of endangered and threatened species. As the principal federal agency concerned with land use planning of privately owned rural land and with professional conservation employees headquartered in almost every county, NRCS is uniquely capable of playing a vital role. Additional training will be provided as needed to meet NRCS responsibilities. NRCS will assist in the conservation of threatened and endangered species and consistent with legal requirements avoid or prevent activities detrimental to such species. NRCS concern for these species will not be limited to those listed by the Secretary of the Interior and published in the FEDERAL REGISTER, but will include species designated by state agencies as rare, threatened, endangered, etc.

(c) *Responsibility*—(1) *NRCS national office.* The Administrator will arrange for consultation and coordination of NRCS national office activities with the U.S. Fish and Wildlife Service, other federal agencies, and national organizations.

(2) *Technical service center.* The TSC director will, within the group of states served by the TSC arrange for consultation and coordination with regional representatives of the U.S. Fish and Wildlife Service, other Federal agencies, and national and regional organizations.

(3) *NRCS state office.* The state conservationist will arrange for consultation and coordination with the state fish and game or conservation agency, other state agencies, state organizations and foundations, conservation districts, and state representatives of federal agencies and national organizations.

(d) *Coordination and implementation.*
(1) The NRCS national office will:

(i) Within the framework of national legislation, USDA agreements, and NRCS objectives, develop NRCS policies and directives for guiding agency efforts that will protect threatened and endangered species and for avoiding actions that jeopardize the continued existence of such species and their critical habitats.

(ii) Maintain needed liaison and develop mutual understanding with the U.S. Fish and Wildlife Service and other concerned federal agencies.

(iii) Establish procedures for periodic review of NRCS participation in the national effort to conserve these species.

(2) The TSC director will:

(i) Within the framework of NRCS policies and guidelines, arrange for needed liaison and understanding with regional counterparts of other federal agencies within the group of states served by the TSC and keep state conservationists informed of developments within such states.

(ii) Provide guidance and assistance to state conservationists in carrying out NRCS policies and guidelines.

(3) The state conservationist will develop procedures to establish working relationships with other concerned federal agencies, state fish and wildlife or conservation agencies, conservation districts, concerned scientists in state university systems and natural history museums, and other informed persons and organizations to offer assistance in:

(i) Preparing or maintaining lists of the state's threatened and endangered species.

(ii) Determining the geographic occurrence of endangered and threatened species, the nature of their habitat, and that portion of the habitat that is critical to the survival, maintenance, or increase of these species.

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(iii) Discussing the kinds of measures important to preserve their habitat.

(iv) A monitoring program that would obtain advanced warning of actions or conditions that could further endanger these species, thereby enabling NRCS and others to take appropriate protective action.

(v) Assisting recovery teams, as appropriate, in preparing species recovery plans of those endangered and threatened species included in Federal lists.

(4) The state conservationist will also:

(i) Keep NRCS area and field offices informed of species listed as being threatened or endangered, geographic area in which they are found, and information such as their numbers, preferred habitat, and critical factors.

(ii) Review the status of threatened and endangered species each December and send a report of the review to the Administrator.

(5) NRCS district conservationists within the geographic range of threatened and endangered species will examine conservation district programs and NRCS operations to evaluate their effects on these species, and recommend to district officials and the state conservationist any action needed for their protection.

(6) NRCS field employees within the geographic range of threatened and endangered species will be continually alert to conditions, actions, or trends that may adversely affect the welfare of these species and report adverse situations to the state conservationist.

§ 650.23 Natural areas.

(a) *Background.* (1) Natural areas are defined as land or water units where natural conditions are maintained insofar as possible. Natural conditions usually result from allowing ordinary physical and biological processes to operate with a minimum of human intervention. Manipulations may be required on natural areas to maintain or restore features that the areas were established to protect.

(2) Natural areas may be designated areas of Federal, non-Federal government, or privately controlled land. Designation may be formal as provided for under federal regulations for areas

of federal land to be administered as natural areas or by foundations or conservation organizations specifically created to acquire and maintain natural areas. Designation may be informal in the case of private landowners who designate a specific area as a natural area and manage it accordingly. Several professional societies concerned with renewable natural resources encourage establishment of natural areas withdrawn from economic uses and recognition of natural areas maintained and managed in economic enterprises.

(3) Natural areas are established and maintained for a variety of purposes including:

(i) *Furthering science and education.* Natural areas provide sites for research and outdoor classrooms for study of plant and animal communities in environments with particular ecological conditions.

(ii) *Monitoring the surrounding environment.* Natural areas serve as gauges against which to evaluate changes in land use, vegetation, animal life, air quality, or other environmental values.

(iii) *Providing recreation attractions.* Natural areas are valued by many people for their scenic, wild, and undisturbed character but must be protected, as needed, to prevent disturbance or alteration of the resources.

(iv) *Preserving unique values.* Natural areas may be established to protect scenic, biologic, geologic, or paleontologic features.

(v) *Serving as a genetic base for native plants and animals.* Natural areas may be established to preserve examples of land and water ecosystems with their full range of genetic diversity of native plants and animals including threatened and endangered species.

(b) *Policy.* NRCS will recognize natural areas, if so dedicated, as a land use, and will support the designation of appropriate natural areas.

(c) *Responsibility—(1) NRCS national office.* The Administrator will designate a member of the national office staff to act as NRCS representative on the Federal Committee for Ecological Preserves and to provide appropriate liaison with other federal agencies and non-Federal groups concerned with natural areas.

(2) *Technical service center.* The TSC director will designate a TSC plant sciences discipline leader to provide leadership, appropriate liaison, and assistance on natural areas to NRCS state offices.

(3) *NRCS state office.* The state conservationist will designate an appropriate NRCS representative to work with other agencies and groups, and will coordinate assistance on natural areas needed by area and field offices.

(d) *Coordination and implementation.* (1) NRCS technical assistance will be furnished to representatives of administering agencies, foundations, groups, and individuals when requested through conservation districts. Conservation district officers will be encouraged to recognize appropriate natural areas concepts and programs and to participate in them.

(2) NRCS employees will report to state conservationists abuses and potential or actual damages to natural areas that may be found in the course of ordinary business.

(3) NRCS will cooperate with professional societies, groups, and individuals in locating areas suitable for and needed as natural areas.

(4) NRCS employees providing technical assistance to land users must inform them about the impact their decisions may have on adjacent or nearby natural areas. Land users will be encouraged to consult with concerned agencies, societies, and individuals to arrive at mutually satisfactory land use and treatment.

(5) Recommended classification systems for characterizing areas designated as ecological preserves or as natural areas are contained in the following publications:

Soil Taxonomy, a Basic System of Soil Classification for Making and Interpreting Soil Surveys, USDA-NRCS Agricultural Handbook 436.

Forest Cover Types of North America Exclusive of Mexico, Report of the Committee on Forest Cover Types, Society of American Foresters, 1964.

Potential Natural Vegetation of Conterminous United States. A. W. Kuchler, American Geographical Society Special Publication 36, 1964.

Wetlands classification described by the U.S. Fish and Wildlife Service in its Circular 39.

NRCS will, to the extent feasible, use these classification systems when providing technical assistance on public and private natural areas and ecological preserves.

(6) The NRCS published National List of Scientific Plant Names will be used when scientific names or name symbols are needed for automatic data processing.

§ 650.24 Scenic beauty (visual resource).

(a) *Background.* Contributions to scenic beauty are a normal product of NRCS work. Strip-cropping, field borders, field windbreaks, and ponds are examples. Emphasis is given to those soil and water conservation measures that contribute to a productive and efficient agriculture and increase the attractiveness of rural America and are in line with goals and objectives of conservation districts. This is best accomplished by considering the landscape visual resource when providing planning assistance to individual landowners, groups, units of government, and watershed and resource conservation development project sponsors. NRCS responsibilities in recreation also offer opportunities to develop the scenic beauty of the rural landscape. Department of Agriculture Secretary's Memorandum 1695, May 28, 1970, "Protecting and Improving The Quality of the Environment," includes scenic beauty as an objective of the Department's programs.

(b) *Policy.* NRCS will: (1) Provide technical assistance with full consideration of alternative management and development systems that preserve scenic beauty or improve the visual resource; (2) emphasize the application of conservation practices having scenic beauty or visual resource values particularly in waste management systems; field borders, field windbreaks, wetland management, access roads, critical area treatment; design and management of ponds, stream margins, odd areas, and farmsteads; siting or positioning of structures and buildings to be in harmony with the landscape while reducing the potential for erosion; using native and other adaptable plants for conservation which enhance scenic beauty and create variety while

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linking beauty with utility; (3) promote personal pride in landowners in the installation, maintenance, and appearance of conservation practices and their properties; (4) select suitable areas for waste products and use of screens to hide “eyesore” areas, and (5) encourage conservation districts to include practices which promote scenic beauty in their annual and long-range programs.

(c) *Responsibility.* The Natural Resources Conservation Service will provide technical assistance through conservation districts to landowners, operators, communities, and state and local governments in developing programs relating to scenic beauty.

(1) *NRCS national office.* The Administrator will:

(i) Assign appropriate NRCS national office leadership to insure that enhancement of scenic beauty is included in national information, policy, guidelines, standards, guides to specifications for conservation practices without impairing basic soil and water conservation functions.

(ii) Emphasize in plant material center management and in plant materials functions that locating and evaluating plants for forage, erosion control, and recreation or wildlife uses be carried out with full attention to visual resource value.

(2) *NRCS state office.* The state conservationist will:

(i) Assign appropriate staff member(s) to provide leadership in carrying out scenic beauty policy and procedure within the state.

(ii) Develop and keep current a landscape management plan to improve and maintain the appearance of all real properties under NRCS control, and provide appropriate assistance to owners and managers of properties leased or rented by NRCS.

(iii) Give emphasis to preserving scenic beauty and contributing to the visual resource in the NRCS information program whenever opportunities exist.

(d) *Coordination and implementation.*

(1) The governing body of each conservation district will be encouraged to revise or update its district program to appropriately provide for beautification of the countryside through ap-

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plicable land use changes and effective soil and water conservation treatment.

(2) In providing assistance to watershed and resource conservation and development project sponsors and other resource planning groups for soil, water, and related resources, emphasis will be given to measures that preserve natural beauty or contribute to the quality of the visual resource.

(3) Local organizations and groups interested in scenic beauty will be contacted and consulted for cooperation in and coordination with NRCS and conservation district efforts.

§ 650.25 Flood-plain management.

Through proper planning, flood plains can be managed to reduce the threat to human life, health, and property in ways that are environmentally sensitive. Most flood plains are valuable for maintaining agricultural and forest products for food and fiber, fish and wildlife habitat, temporary flood-water storage, park and recreation areas, and for maintaining and improving environmental values. NRCS technical and financial assistance is provided to land users primarily on non-Federal land through local conservation districts and other State and local agencies. Through its programs, NRCS encourages sound flood-plain management decisions by land users.

(a) *Policy*—(1) *General.* NRCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base (100-year) flood plains as part of technical and financial assistance in the programs it administers. In addition, 500-year flood plains are taken into account where there are “critical actions” such as schools, hospitals, nursing homes, utilities, and facilities producing or storing volatile, toxic, or water-reactive materials.

(2) *Technical assistance.* NRCS provides leadership, through consultation and advice to conservation districts and land users, in the wise use, conservation, and preservation of all land, including flood plains. Handbooks, manuals, and internal memoranda set forth specific planning criteria for addressing flood-plain management in NRCS-assisted programs. The general procedures and guidelines in this part

comply with Executive Order (E.O.) 11988, Floodplain Management, dated May 24, 1977, and are consistent with the Water Resources Council's Unified National Program for Floodplain Management.

(3) *Compatible land uses.* The NRCS Administrator has determined that providing technical and financial assistance for the following land uses is compatible with E.O. 11988:

(i) Agricultural flood plains that have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance; and

(ii) Agricultural production in accordance with official State or designated area water-quality plans.

(4) *Nonproject technical and financial assistance programs.* The NRCS Administrator has determined that NRCS may not provide technical and financial assistance to land users if the results of such assisted actions are likely to have significant adverse effects on existing natural and beneficial values in the base flood plain and if NRCS determines that there are practicable alternatives outside the base flood plain. NRCS will make a case-by-case decision on whether to limit assistance whenever a land user proposes converting existing agricultural land to a significantly more intensive agricultural use that could have significant adverse effects on the natural and beneficial values or increase flood risk in the base flood plain. NRCS will carefully evaluate the potential extent of the adverse effects and any increased flood risk.

(5) *Project technical and financial assistance programs.* In planning and installing land and water resource conservation projects, NRCS will avoid to the extent possible the long and short-term adverse effects of the occupancy and modification of base flood plains. In addition, NRCS also will avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. As such, the environmental evaluation required for each project action (§ 650.5 of this part) will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described

in § 650.6 of this part and will comply with section 2(a)(4) of E.O. 11988. Floodplain management requires the integration of these concerns into NRCS's National Environmental Policy Act (NEPA) process for project assistance programs as described in Section 650 of this part.

(6) *Real property and facilities under NRCS ownership or control.* NRCS owns or controls about 30 properties that are used primarily for the evaluation and development of plant materials for erosion control and fish and wildlife habitat plantings (7 CFR Part 613, Plant Materials Centers, 16 U.S.C. 590 a-e, f, and 7 U.S.C. 1010-1011). If NRCS real properties or facilities are located in the base flood plain, NRCS will require an environmental evaluation when new structures and facilities or major modifications are proposed. If it is determined that the only practicable alternative for siting the proposed action may adversely affect the base flood plain, NRCS will design or modify its action to minimize potential harm to or within the flood plain and will prepare and circulate a notice explaining why the action is proposed to be located in the base flood plain. Department of Housing and Urban Development (HUD) flood insurance maps, other available maps, information, or an onsite analysis will be used to determine whether the proposed NRCS action is in the base flood plain. Public participation in the action will be the same as described in § 650.6 of this part.

(b) *Responsibility.* NRCS provides technical and financial assistance to land users primarily through conservation districts, special purpose districts, and other State or local subdivisions of State government. Acceptance of this assistance is voluntary on the part of the land user. NRCS does not have authority to make land use decisions on non-Federal land. NRCS provides the land user with technical flood hazard data and information on flood-plain natural values. NRCS informs the land user how alternative land use decisions may affect the aquatic and terrestrial ecosystems, human safety, property, and public welfare. Alternatives to flood-plain occupancy, modification, and development are discussed onsite with the land user by NRCS.

(1) *NRCS National Office.* (§600.2 of this part). The NRCS Administrator, state conservationist, and district conservationist are the responsible Federal officials in NRCS for implementing the policies expressed in these rules. Any deviation from these rules must be approved by the Administrator. The Deputy Administrator for Programs has authority to oversee the application of policy in NRCS programs. Oversight assistance to state conservationists for flood-plain management will be provided by the NRCS technical service centers (§600.3 of this part).

(2) *NRCS state offices.* (§600.4 of this part). Each state conservationist is the responsible Federal official in all NRCS-assisted programs administered within the State. He or she is also responsible for administering the plant materials centers within the State. The state conservationist will assign a staff person who has basic knowledge of landforms, soils, water, and related plant and animal ecosystems to provide technical oversight to ensure that assistance to land users and project sponsors on the wise use, conservation, and preservation of flood plains is compatible with national policy. For NRCS-assisted project actions, the staff person assigned by the state conservationist will consult with the local jurisdictions, sponsoring local organizations, and land users, on the basis of an environmental evaluation, to determine what constitutes significant adverse effects or incompatible development in the base flood plain. The state conservationist is to prepare and circulate a written notice for NRCS-assisted actions for which the only practicable alternative requires siting in a base flood plain and may result in adverse effects or incompatible development. The NRCS NEPA process will be used to integrate flood-plain management into project planning and consultations on land use decisions by land users and project sponsors.

(3) *NRCS field offices.* The district conservationist (§600.6 of this part) is delegated the responsibility for providing technical assistance and approving financial assistance to land users in nonproject actions, where applicable, and for deciding what constitutes an

adverse effect or incompatible development of a base flood plain. This assistance will be based on official NRCS policy, rules, guidelines, and procedures in NRCS handbooks, manuals, memoranda, etc. For NRCS-assisted nonproject actions, the district conservationist, on the basis of the environmental evaluation, will advise recipients of technical and financial assistance about what constitutes a significant adverse effect or incompatible development in the base flood plain.

(c) *Coordination and implementation.* All planning by NRCS staffs is interdisciplinary and encompasses the six NEPA policy statements, the WRC Principles and Standards, and an equivalent of the eight-step decision-making process in the WRC's February 1978 Floodplain Management Guidelines. NRCS internal handbooks, manuals, and memoranda provide detailed information and guidance for NRCS planning and environmental evaluation.

(1) *Steps for nonproject technical and financial assistance programs.* (i) NRCS assistance programs are voluntary and are carried out through local conservation districts (State entities) primarily on non-Federal, privately owned lands.

(ii) After the land user decides the type, extent, and location of the intended action for which assistance is sought, the district conservationist will determine if the intended action is in the base flood plain by using HUD flood insurance maps, and other available maps and information or by making an onsite determination of the approximate level of the 100-year flood if maps or other usable information are lacking.

(iii) If the district conservationist determines that the land user's proposed location is outside the base flood plain, and would not cause potential harm within the base flood plain, NRCS will continue to provide assistance, as needed.

(iv) If the district conservationist determines that the land user's proposed action is within the base flood plain and would likely result in adverse effects, incompatible development, or an increased flood hazard, it is the responsibility of the district conservationist to determine and point out to the land

user alternative methods of achieving the objective, as well as alternative locations outside the base flood plain. If the alternative locations are determined to be impractical, the district conservationist will decide whether to continue providing assistance. If the decision is to terminate assistance for the proposed action, the land user and the local conservation district, if one exists, will be notified in writing about the decision.

(v) If the district conservationist decides to continue providing technical and financial assistance for a proposed action in the base flood plain, which is the only practicable alternative, NRCS may require that the proposed action be designed or modified so as to minimize potential harm to or within the flood plain. The district conservationist will prepare and circulate locally a written notice explaining why the action is proposed to be located in the base flood plain.

(2) *Steps for project assistance programs.* (i) NRCS project assistance to local sponsoring organizations (conservation districts and other legal entities of State government) and land users is carried out primarily on non-Federal land in response to requests for assistance. NRCS helps the local sponsoring organizations prepare a plan for implementing the needed resource measures.

(ii) NRCS uses an interdisciplinary environmental evaluation (§650.6 of this part) as a basis for providing recommendations and alternatives to project sponsors. Flood-plain management is an integral part of every NRCS environmental evaluation. NRCS delineates the base flood plain by using detailed HUD flood insurance maps and other available data, as appropriate, and provides recommendations to sponsors on alternatives to avoid adverse effects and incompatible development in base flood plains. NRCS will develop, as needed, detailed 100-year and 500-year flood-plain maps where there are none.

(iii) NRCS's NEPA process (part 650 of this chapter) is used to integrate the spirit and intent of E.O. 11988 Sections 2(a) and 2(c) into agency planning and recommendations for land and water

use decisions by local sponsoring organizations and land users.

(iv) NRCS will terminate assistance to a local sponsoring organization in project programs if it becomes apparent that decisions by land users and local jurisdictions concerning flood-plain management would likely result in adverse effects or incompatible development and the environmental evaluation reveals that there are practicable alternatives to the proposed project that would not cause adverse effects on the base flood plain.

(v) In carrying out the planning and installation of land and water resource conservation projects, NRCS will avoid, to the extent possible, the long-term and short-term adverse effects associated with the occupancy and modification of base flood plains. In addition, NRCS will also avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. Where appropriate, NRCS will require design modifications to minimize harm to or within the base flood plain. NRCS will provide appropriate public notice and public participation in the continuing planning process in accordance with NRCS NEPA process.

(vi) NRCS may require the local government to adopt and enforce appropriate flood plain regulations as a condition to receiving project financial assistance.

(3) *Actions on property and facilities under NRCS ownership or control.* For real property and facilities owned by or under the control of NRCS, the following actions will be taken:

(i) Locate new structures, facilities, etc., outside the base flood plain if there is a practicable alternate site.

(ii) Require public participation in decisions to construct structures, facilities, etc., in flood plains that might result in adverse effects and incompatible development in such areas if no practicable alternatives exist.

(iii) New construction or rehabilitation will be in accordance with the standards and criteria of the National Flood Insurance Program and will include floodproofing and other flood protection measures as appropriate.

[44 FR 44462, July 30, 1979]

PART 651 [RESERVED]**PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE****Subpart A—General Provisions**

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AUTHORITY: 16 U.S.C. 3842.

SOURCE: 69 FR 69472, Nov. 29, 2004, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 75 FR 6845, Feb. 12, 2010, unless otherwise noted.

§ 652.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers (TSPs). The Food Security

Act of 1985, requires the Secretary to deliver technical assistance to eligible participants for implementation of its Title XII Programs and the conservation activities in the Agricultural Management Assistance Program, 7 U.S.C. 1524, directly, through an agreement with a third party provider, or at the option of the producer through payment to the producer for an approved third party provider. This regulation defines how a participant acquires technical service from a third party TSP, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

(b) TSPs may provide technical services to eligible participants in conservation planning, education and outreach, and assistance with design and implementation of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land.

(c) The Chief may implement this part in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 652.2 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Approved list means the list of individuals, private sector entities, or public agencies certified by the Natural Resources Conservation Service (NRCS) to provide technical services to a participant.

Certification means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

(2) An entity or public agency having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

Chief means the Chief of NRCS or designee.

Conservation activity plan means the conservation practices associated with plan development as authorized under the Food, Conservation, and Energy Act of 2008 (2008 Act).

Conservation plan means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process that meets the Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals), and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of opportunities at a conservation management system level. The needs of the client, the resources, and Federal, State, and local requirements will be met.

Conservation practice means a specified treatment, such as a structural or vegetative practice, or a land management practice that is planned and applied according to NRCS standards and specifications.

Contribution agreement means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

Cooperative agreement means the same as defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

Department means the NRCS, the Farm Service Agency, or any other agency or instrumentality of the Department of Agriculture (USDA) that is assigned responsibility for all or a part of a conservation program subject to this part.

Eligible participant means a producer, landowner, or entity that is participating in, or seeking to participate in, a conservation program covered by this rule in which the producer, landowner, or entity is otherwise eligible to participate.

Entity means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

Indian land means all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and benefit of certain tribes. The term Indian land also includes land for which the title is held in fee status by Indian tribes and the United States Government-owned land under the Bureau of Indian Affairs jurisdiction.

Procurement contract means the same as the term "contract" means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

Program contract means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a program authorized under Title XII of the Food Security Act of 1985, or the Agricultural Management Assistance Program, authorized under 7 U.S.C. 1524.

Public agency means a unit or subdivision of Federal, State, local, or tribal government other than the Department.

Recommending organization means a professional organization, association, licensing board, or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as TSPs for specific technical services.

Secretary means the Secretary of the Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Basin Area.

Technical service means the technical assistance provided by TSPs, including conservation planning; education and outreach; and the design, installation, and check-out of approved conservation practices.

Technical service contract means a document that specifies the rights and obligations of an eligible participant to obtain technical services from a TSP where the eligible participant will not receive financial assistance for the implementation of the practice paid for in the technical service contract through

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participation in a Title XII conservation program or the Agricultural Management Assistance Program, 7 U.S.C. 1524.

Technical service provider means an individual, entity, Indian Tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Written agreement means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

[75 FR 6845, Feb. 12, 2010, as amended at 75 FR 48273, Aug. 10, 2010]

§ 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a TSP in accordance with the requirements of this part.

(b) The Chief of NRCS will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a TSP process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of TSPs and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of TSPs;

(4) Provide training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such technical expertise. However, any training provided by the Department will be limited to training about Department regulations, policies, proce-

dures, processes, and business and technical tools unique to NRCS; and

(5) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a TSP unless the TSP is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a TSP in this manner, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B, nor identified on the approved list.

(f) When a participant acquires technical services from a TSP, the Department is not a party to the agreement between the participant and the TSP. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the TSP must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, TSPs are required to submit copies of all transcripts, licensing, and certification documentation.

§ 652.4 Technical service standards.

(a) All technical services provided by TSPs must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established

NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a TSP initiating technical services for those technologies and practices.

(c) A TSP must assume responsibility in writing for the particular technical services provided. Technical services provided by the TSP must:

(1) Comply with all applicable Federal, State, tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) TSPs are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a TSP.

(g) The TSP will report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or tribal law, TSPs may utilize the

services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

§ 652.5 Participant acquisition of technical services.

(a) Participants may obtain technical assistance directly from the Department or, when available, from a TSP.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a TSP, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified TSP from the approved list of TSPs.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans or activity plans suitable for subsequent incorporation into a program contract.

(f) The Department may make payment to eligible participants who have a technical service contract and utilize it for technical assistance from a TSP.

(g) The Department will identify in the particular program contract or written agreement the payment provisions for TSPs hired directly by the participant.

(h) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department will

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issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a TSP hired by the participant, or upon receipt of an assignment of payment from the participant, make payment directly to the TSP.

(i) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific TSPs.

(j) Payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(k) The Department will not make payment for activities or services that are customarily provided at no cost by a TSP to a participant as determined by the State Conservationist.

(l) Payment rates for technical services acquired by participants.

(1) NRCS will calculate TSP payment rates for technical services using national, regional, and locally determined price data.

(2) Establishing TSP payment rates.

(i) NRCS will establish guidelines to analyze the local pricing information using a standardized method.

(ii) The State Conservationist will establish TSP payment rates in each State for the various categories of technical services. The State Conservationist will determine the rates according to local NRCS cost data, procurement data, and market data.

(iii) National Headquarters will review and approve State payment rates to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between or within States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) National Headquarters and State levels will review payment rates annually or more frequently, as needed, and adjust the rates based upon data from existing procurement contracts, Fed-

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eral cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific TSP payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

§ 652.6 Department delivery of technical services.

(a) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.

(b) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument with TSPs to provide related technical assistance services that accelerate conservation program delivery. Related technical assistance services may include activities or services that facilitate the development, processing, or implementation of a program contract, such as recording conservation planning decisions and specifications.

(c) NRCS may enter into agreements with other agencies or with a non-Federal entity to provide technical services to eligible participants.

(d) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a TSP through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B of this part nor identified on the approved list.

(e) The Department will implement procurement contracts, contribution agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate. Any contract, contribution agreement, cooperative agreement, or other appropriate instrument entered into under this section will be for a minimum of one year, will not exceed 3 years in duration, and may be renewed upon mutual agreement of the parties.

(f) A TSP may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.

(g) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by TSPs. As a requirement of certification, TSPs must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and provide this documentation to NRCS and the participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the TSP, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a TSP under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the TSP detailing the deficiency and requesting remedial action by the TSP. Failure by the TSP to

promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. TSPs are solely responsible for providing technical services that meet all NRCS standards and specifications.

Subpart B—Certification

§ 652.21 Certification criteria and requirements.

(a) To qualify for certification an individual must:

(1) Have the required technical training, education, and experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable professional or business licensing or similar qualification standards established by State or Tribal law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must be authorized to provide such services in the jurisdiction and have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the participant, for

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the technical services provided or may result in decertification.

(d) NRCS will certify Technical Service Providers for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years. Decertification and Renewal of Certification is administered in accordance with § 652.26.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

§ 652.22 Certification process for individuals.

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24, as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an individual under paragraph (a)(1) of this section and in accordance with paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific practice, category, or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by practice or category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

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§ 652.23 Certification process for private-sector entities.

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that it has the requisite professional and business licensure within the jurisdiction for which it seek certification, and that it employs at least one individual, authorized to act on its behalf that:

(1) Has received certification on an individual basis in accordance with § 652.22; or

(2) Seeks certification on an individual basis as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine pursuant to § 652.22 whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.21 for the specific services the entity wishes to provide.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(d) The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity has, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide an amended Certification Agreement to NRCS for approval when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity be legally responsible for the work performed by any individual working under the auspices of its certification.

(e) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

§ 652.24 Certification process for public agencies.

(a) A public agency that applies for certification must identify, and provide supporting documentation, that it has the authority within the jurisdiction within which it seeks to provide technical services and an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification

Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual that is authorized to act on the public agency's behalf; and

(5) Require that the public agency be legally responsible for the work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

§ 652.25 Alternative application process for individual certification.

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to NRCS individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific practices or categories of technical services;

(3) Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

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(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in §652.21(a) for specific practices or categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will, within 60 days, make a determination on the recommendation for certification issued by the recommending organization. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of §652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

§ 652.26 Certification renewal.

(a) NRCS certifications are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years and automatically expire unless they are renewed for an additional time period in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

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(c) All certification renewals are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed three years and before expiration, may be renewed for subsequent time period in accordance with this section.

Subpart C—Decertification

§ 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, if the technical service provider, or someone acting on behalf of the technical service provider:

(a) Fails to meet NRCS standards and specifications in the provision of technical services;

(b) Violates the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified;

(c) Engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or

(d) Commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or provide technical services under this part.

§ 652.33 Notice of proposed decertification.

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

§ 652.35 State Conservationist decision.

Within 40 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the State Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: the Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by cer-

tified mail, return receipt requested, to the technical service provider.

§ 652.36 Appeal of decertification decisions.

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) Final decision. Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

§ 652.37 Period of decertification.

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of Certification Agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if

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the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the State Conservationist, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

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(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure, or otherwise enter into an agreement for, the services of a decertified technical service provider during the period of decertification.

(b) National decertification list. NRCS shall maintain a current list of decertified technical service providers. NRCS shall remove decertified providers from the list of certified providers. Participants may not hire a decertified technical service provider. It is the participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

PART 653—TECHNICAL STANDARDS

- Sec.
- 653.1 General.
- 653.2 Technical standards and criteria.
- 653.3 Adaptation of technical standards.
- 653.4 Availability of technical standards.

AUTHORITY: 7 CFR 2.62.

SOURCE: 43 FR 58079, Dec. 12, 1978, unless otherwise noted.

§ 653.1 General.

The Natural Resources Conservation Service (NRCS) is responsible for the technical adequacy of conservation practices installed under all NRCS programs, and those practices applied under programs administered by the Agricultural Stabilization and Conservation Service (ASCS) where NRCS has the technical responsibility. NRCS technical or financial assistance will be provided when the practices are applied according to established technical standards.

§ 653.2 Technical standards and criteria.

Technical standards and criteria have been established for all conservation practices. They provide the guidance and direction needed to assure that the practices meet the intended purpose and are of the quality needed to assure lasting for the design life. Standards and criteria are developed in consultation with universities, research institutions, and individual industrial and private firms and individuals. Research information and practical experience are used in setting standards. Changes and new technical standards and criteria are prepared in the same manner as set out above.

§ 653.3 Adaptation of technical standards.

Technical standards and criteria developed on a national basis may require special adaptation to meet local needs. These adaptations must be approved by the Administrator of the Natural Resources Conservation Service or his designee.

§ 653.4 Availability of technical standards.

Information on technical standards used by NRCS is available at field, area, or State offices of NRCS.

PART 654—OPERATION AND MAINTENANCE

Subpart A—General

Sec.

- 654.1 Purpose and scope.
- 654.2 Definitions.

Subpart B—Federal Financially-Assisted Projects

- 654.10 Operation and maintenance agreement.
- 654.11 Sponsor(s)' responsibility.
- 654.12 Financing operations and maintenance.
- 654.13 Designating responsibility for operation and maintenance.
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Subpart C—Conservation Operations

- 654.30 Responsibility for operation and maintenance.
- 654.31 Performing operation and maintenance.

Subpart D—Emergency Watershed Protection

- 654.40 Responsibility for operation and maintenance.
- 654.41 Performance of operation and maintenance.

Subpart E—Great Plains Conservation Program

- 654.50 Responsibility for operation and maintenance.

AUTHORITY: Pub. L. 83-566, 68 Stat. 666, as amended (16 U.S.C. 1001-1008). Sec. 1, Pub. L. 86-468, 74 Stat. 131, as amended (16 U.S.C. 1006a); sec. 2, Pub. L. 78-534, 58 Stat. 889 (33 U.S.C. 701a-1); sec. 13, Pub. L. 78-534, 58 Stat. 905; sec. 5, Pub. L. 93-251, 88 Stat. 15; Pub. L. 87-703, 76 Stat. 607 (7 U.S.C. 1010-1011); Pub. L. 74-46, 49 Stat. 163 (16 U.S.C. 590a-f, q); Pub. L. 84-1021, 70 Stat. 1115, as amended (16 U.S.C. 590p(b)); sec. 216, Pub. L. 81-516, 64 Stat. 184 (33 U.S.C. 701b-1); 7 CFR 2.62.

SOURCE: 42 FR 58159, Nov. 8, 1977, unless otherwise noted.

Subpart A—General

§ 654.1 Purpose and scope.

(a) This part sets forth the operation and maintenance requirements pertaining to measures installed with Natural Resources Conservation Service (NRCS) assistance. This includes measures installed under the following programs:

(1) Federal financially-assisted projects.

(i) Watershed Protection and Flood Prevention (WP&FP). See part 622 of this title.

(ii) Flood Prevention (FP). See part 623 of this title.

(iii) Specifically authorized projects.

(iv) Resource Conservation and Development (RC&D).

(2) Conservation Operations (CO).

(3) Emergency Watershed Protection (EWP). See part 624 of this title.

(4) Great Plains Conservation Program (GP). See part 631 of this title.

(b) These regulations shall apply to all Federal financially-assisted projects as set forth in subpart B for the duration of their respective operation and maintenance agreements. However, this does not relieve the sponsor(s) of any liability which may continue beyond the evaluated life of the measure under Federal, State, and local laws. Operation and maintenance agreements in effect prior to the effective date of these regulations are not affected by these regulations.

§ 654.2 Definitions.

Evaluated life. The time period for which project or measure benefits and costs have been evaluated. The evaluated life starts after the last project measure of the evaluation unit has been completed.

Landuser. Those who individually or collectively use land as owner, lessee, occupier, or by other arrangements which give them conservation planning or implementation concern and responsibility for the land involved.

Maintenance. The work and actions required to keep works of improvement in a condition to function for their intended purpose and the replacement of portions of project measures as specified in the O&M agreement.

Operation. The administration, management, and performance of services needed to insure the continued proper functioning of completed project measures.

Operation and maintenance agreement. A written agreement between the sponsor(s) and NRCS or other recipient(s) in which responsibilities and actions are established for the operation, maintenance, replacement, and inspection of project measures.

Plan of operation and maintenance. A detailed program of action to provide for performing the operation and maintenance of a specific project measure.

Project measures. An undertaking for watershed protection; flood prevention; the conservation, development, utilization, and disposal of water; the conservation and proper utilization of land; or a combination thereof. The undertaking may consist of vegetative, structural, or management measures or a combination thereof. Vegetative measures are those measures involving only seedbed preparation and/or the planting of vegetative material.

Public recreation and/or fish and wildlife facility. A project measure or part thereof which (a) creates or improves the potential for public recreational use and enjoyment, or (b) materially contributes to the preservation, production, or harvest of fish and wildlife.

Sponsor. An agency or organization with authority to provide local responsibility for a Federal financially-assisted local project under a program administered by NRCS.

State Conservationist. The NRCS officer responsible for NRCS activities within a particular State, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

Structural measures. Structural measures are those measures that are excavated or constructed with concrete, earth, masonry, metal, rock, or other materials, and associated vegetation.

Subpart B—Federal Financially-Assisted Projects

§ 654.10 Operation and maintenance agreement.

A duly authorized official of the sponsor(s) must execute an O&M agreement with NRCS prior to NRCS furnishing financial assistance.

§ 654.11 Sponsor(s)' responsibility.

(a) On non-Federal land, sponsor(s) are responsible for financing and performing without cost to the Federal Government, needed operation and maintenance (O&M) of project measures installed with Federal financial assistance.

(b) The Federal agency administering Federal land involving project measures is responsible either for performing or requiring the performance of O&M on land administered by that agency. If project measures benefit both Federal and non-Federal land or interests, the O&M may be performed by the Federal agency, the sponsor(s), or both as mutually agreed by the Federal agency, sponsor(s), and NRCS. If O&M of project measures is performed by mutual agreement, the cost of O&M may be shared by the Federal agency and sponsor(s) as agreed.

(c) The sponsor(s) shall obtain NRCS approval before modifying a project measure of changing land use to fulfill a different purpose.

§ 654.12 Financing operations and maintenance.

Sources of funds needed to operate and maintain project measures for the duration of the O&M agreement shall be identified in the watershed or RC&D measure plan.

§ 654.13 Designating responsibility for operation and maintenance.

Those organizations or agencies responsible for the O&M of each project measure shall be identified in the watershed or RC&D measure plan.

§ 654.14 Duration of sponsor(s)' responsibility.

(a) Sponsor(s)' responsibility for O&M of a completed project measure begins when a part of all of the contract installing such measure is com-

pleted and accepted from the contractor. If the installation of the project measure is performed by force account, division of work, or performance of work methods, the sponsor(s)' O&M responsibilities begin on the date the work or portion thereof is completed as determined by NRCS, except for completed work located on Federal lands which are subject to special-use permits. The O&M agreement shall specify that O&M will continue through: (1) The evaluated life of the project, or (2) the evaluated life of measures that are economically evaluated as a unit, or (3) the useful life of cost-shared measures that are for land conservation or land utilization. The sponsor(s)' duties and liabilities for the measures under other Federal and State laws are not affected by the expiration of the O&M agreement.

(b) For project measures being installed in segments, the sponsor(s) shall be responsible for O&M of completed and accepted segments. However, the NRCS may share in the cost of repairing damages to a completed segment when the damage is attributed to the continuation of work on uncompleted segments of the measure or when due to the fact that the measure was only partially completed.

§ 654.15 Operation and maintenance.

Sponsor(s) are to operate and maintain completed project measures in:

(a) Compliance with applicable Federal, State, and local laws, regulations, and ordinances.

(b) Compliance with any applicable conditions set forth in the instruments by which the landrights were acquired for installing, operating, and maintaining the project measures.

(c) A manner that will not significantly degrade the environment and will permit project measures to serve the purpose for which they were installed as set forth in the watershed or RC&D measure plan.

(d) Compliance with the time frames and O&M work items established in the plan of O&M and inspection reports.

(e) Accordance with agreements with NRCS on admission charges and user fees for public recreation and/or fish and wildlife facility. Admission or user fees shall be charged only as necessary

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to produce revenues required to amortize the sponsor(s)' share of installation costs and to provide adequate O&M for that portion of the project measures pertaining to public recreation and/or fish and wildlife facility. Sponsor(s)' admission or user fee charges require prior NRCS approval throughout the life of the O&M agreement.

(f) Accordance with the schedule for withdrawal of water in water impounding structures as specified in the watershed or RC&D measure plan or other legal documents.

(g) A manner consistent with the project objectives.

§ 654.16 Property management.

Sponsor(s) are to:

(a) Use real property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired and in accordance with the O&M agreement. If real property acquired in whole or in part with Federal funds is no longer needed for the purpose for which it was acquired, the sponsor(s) shall obtain NRCS approval for future use or disposition.

(b) Use nonexpendable personal property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired in accordance with the rules governing Federal grant property (34 CFR part 256).

(c) Establish, adopt, and comply with a property management system which meets the standards governing Federal grant property.

§ 654.17 Inspection.

(a) Sponsor(s) are to make periodic and special inspections of installed project measures as provided in the plan of O&M. For structural measures, inspections are to be made at least annually and after each major storm or occurrence of any unusual condition that might adversely affect the project measures. At the discretion of the State Conservationist, NRCS may assist sponsor(s) with their inspections. NRCS or land-administering agencies may make independent inspections at any time during the period covered by the O&M agreement.

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(b) Sponsor(s) are to maintain a written record of each inspection and furnish NRCS and land-administering agencies a copy of that record. The record should identify items inspected, O&M work that may be needed, a time frame to do the work, and the date of the inspection. The NRCS and land-administering agencies will provide the sponsor(s) a copy of a similar record of independent inspections.

(c) The sponsor(s) shall perform the O&M work listed as needed in the inspection reports within the time frame established for each item of work. Failure to perform O&M work will be considered a violation of the O&M agreement and will be handled in accordance with § 654.20.

(d) Sponsor(s) are to maintain a written record of work performed which is listed in the inspection report and a record of other significant O&M activity. The record will identify the measure, item of work, cost of performance, and date completed.

(e) Sponsor(s)' records relative to the project shall be made available to NRCS for examination.

§ 654.18 Natural Resources Conservation Service responsibility.

The Natural Resources Conservation Service will assist the sponsor(s) in developing a watershed or RC&D measure plan which includes a description of O&M work and estimated cost, assist in the preparation of O&M agreements and plans of O&M, enter into O&M agreements with the sponsor(s), and notify the sponsor(s) of observed failures to comply with the O&M agreement.

§ 654.19 Plan of operation and maintenance.

(a) The plan for O&M shall be incorporated into and made a part of the O&M agreement. A separate plan of O&M shall be prepared for each project measure that is expected to have a unique O&M need. Two or more measures with similar O&M needs may be included in a single plan for O&M.

(b) The plan of O&M shall include the known and anticipated items of O&M, an explanation of how the O&M activities may be carried out, a general time frame for making O&M inspections and

for completing the needed O&M work, and the records and reports deemed appropriate by the sponsor(s) and NRCS.

§ 654.20 Violations of operation and maintenance agreement.

(a) The State Conservationist shall investigate alleged sponsor violations of the O&M agreement. If the State Conservationist determines that a violation has occurred that may prevent the project measure from functioning as intended, create a health or safety hazard, or prevent the accrual of project benefits, he shall provide sponsor(s) written notification.

(b) If the sponsor(s) fail to comply with the O&M agreement or fail to take corrective action, NRCS may notify authorities having appropriate jurisdiction, withhold further assistance to the project, require the sponsor(s) to reimburse the government for the NRCS share of the cost of the project, and/or pursue other action authorized by the O&M agreement or law.

Subpart C—Conservation Operations

§ 654.30 Responsibility for operation and maintenance.

The land user is responsible for O&M of soil and water conservation measures installed with NRCS assistance provided through soil, water, and other conservation districts.

§ 654.31 Performing operation and maintenance.

The method of performing O&M is to be at the option of the land user. The NRCS, working through districts, will furnish information and technical assistance as needed and requested to the extent NRCS resources permit.

Subpart D—Emergency Watershed Protection

§ 654.40 Responsibility for operation and maintenance.

(a) *Non-Federal lands.* The need for an O&M agreement will be determined by the State Conservationist. Where an O&M agreement is necessary, the sponsor(s) will provide the O&M and adopt standards for Federal grant property (34 CFR part 256). Where no O&M agree-

ment is necessary, other arrangements will be made for complying with Federal property management.

(b) *Federal lands.* The Federal agency administering the Federal land is responsible for operating and maintaining emergency measures installed on Federal land.

§ 654.41 Performance of operation and maintenance.

(a) *Arrangement.* O&M is a prerequisite for approval of Federal emergency assistance when:

(1) The emergency measure needs to be operated and maintained in order to serve its intended purpose, or

(2) The emergency measure needs to be operated and maintained to insure that it will not become hazardous.

(b) *Time of operation and maintenance.* The sponsor(s)' obligations for O&M begin when the measure is installed and extend for the duration of the time required for the emergency measure to serve the purpose for which it is installed.

(c) *Performance.* Operation and maintenance is to be performed in a manner that will protect the environment and otherwise comply with NRCS, State, and local requirements. The method of performing O&M is at the option of the sponsor(s).

Subpart E—Great Plains Conservation Program

§ 654.50 Responsibility for operation and maintenance.

Responsibility for practices under the Great Plains Conservation Program are contained in § 631.10 of this chapter.

PART 655 [RESERVED]

PART 656—PROCEDURES FOR THE PROTECTION OF ARCHEOLOGICAL AND HISTORICAL PROPERTIES ENCOUNTERED IN NRCS-ASSISTED PROGRAMS

Sec.

656.1 Purpose.

656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.

656.3 Policy.

§ 656.1

656.4-656.9 [Reserved]

AUTHORITY: Pub. L. 86-523, 74 Stat. 220, as amended (16 U.S.C. 469 et seq.); Pub. L. 89-665, 80 Stat. 915, as amended (16 U.S.C. 470 et seq.); 7 CFR 2.62.

SOURCE: 42 FR 36804, July 18, 1977, unless otherwise noted.

§ 656.1 Purpose.

This part prescribes Natural Resources Conservation Service (NRCS) policy, procedures, and guidelines for the implementation of archeological and historical laws and appropriate executive orders for administering NRCS programs.

§ 656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.

(a) *The Act of June 27, 1960*, relating to the preservation of historical and archeological data, Pub. L. 86-523, 74 Stat. 220, as amended May 24, 1974; Pub. L. 93-291, 88 Stat. 174 (16 U.S.C. 469 et seq.), provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally-assisted or licensed project, activity, or program.

(b) *The National Historic Preservation Act*, Pub. L. 89-665, 80 Stat. 915, as amended, (16 U.S.C. 470 et seq.), authorizes the Secretary of the Interior to maintain and expand a National Register of Historic Places (NRHP), including historic districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, and culture. This law also establishes the Advisory Council on Historic Preservation (ACHP), to be appointed by the President. Section 106 of this Act (16 U.S.C. 470f), requires that prior to the approval of any Federal or federally-assisted or licensed undertaking, the Federal agency shall afford the ACHP a reasonable opportunity to comment, if properties listed in or eligible for listing in NRHP are affected.

(c) *Executive Order 11593 (36 FR 8921, 3 CFR 1971 Comp. P. 154)*, Protection and Enhancement of the Cultural Environment, provides that the Federal government shall furnish leadership in preserving, restoring, and maintaining the historical and cultural environ-

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ment of the nation, and that Federal agencies shall administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; initiate measures necessary to direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archeological significance are preserved, restored, and maintained. Section 1(3) directs that agencies institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archeological significance in consultation with the ACHP.

§ 656.3 Policy.

(a) NRCS recognizes that significant historical, archeological, and architectural resources are an important part of our national heritage, the protection of which requires careful consideration in this agency's project planning and implementation process.

(b) NRCS will take reasonable precautions to avoid damaging any significant historic, cultural, or natural aspects of our national heritage and will work with the National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP) in identifying and seeking to avoid or mitigate adverse effects of NRCS-assisted projects on the Nation's significant cultural resources. The procedures contained in this part have been developed to comply with sections 1(3) and 2(c) of Executive Order 11593.

§§ 656.4-656.9 [Reserved]

PART 657—PRIME AND UNIQUE FARMLANDS

Subpart A—Important Farmlands Inventory

Sec.

657.1 Purpose.

657.2 Policy.

657.3 Applicability.

657.4 NRCS responsibilities.

657.5 Identification of important farmlands.

AUTHORITY: 7 U.S.C. 1010a; 16 U.S.C. 590a-590f; 42 U.S.C. 3271-3274.

SOURCE: 43 FR 4031, Jan. 31, 1978, unless otherwise noted.

Subpart A—Important Farmlands Inventory

§ 657.1 Purpose.

NRCS is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber forage, and oilseed crops. In addition to prime and unique farmlands, farmlands that are of statewide and local importance for producing these crops also need to be identified.

§ 657.2 Policy.

It is NRCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the National, State, and local levels of government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

§ 657.3 Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and State officials.

§ 657.4 NRCS responsibilities.

(a) *State Conservationist.* Each NRCS State Conservationist is to:

(1) Provide leadership for inventories of important farmlands for the State, county, or other subdivision of the State. Each is to work with appropriate agencies of State government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the State that qualify as prime. In doing this, State Conservationists, in consultation with the cooperators of the National Cooperative Soil Survey, have the flexibility to make local deviation from the permeability criterion or to be more restrictive for other specific criteria in order to assure the most accurate identification of prime farmlands for a State. Each is to invite

representatives of the Governor's office, agencies of the State government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmland;

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information; and

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands to meet the criteria for unique farmlands. Copies are to be furnished to NRCS Field Offices and to National Soil Survey Center. (see 7 CFR 600.2(c), 600.6)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including Major Land Resource Area Offices (see 7 CFR 600.4, 600.7) responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the State level, the soil mapping units and areas identified need not be coordinated among States.

(5) Instruct NRCS District Conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by Conservation Districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decisionmaking needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Chief for consideration.

(b) *National Soil Survey Center.* The National Soil Survey Center is to provide requested technical assistance to State Conservationists and Major Land Resource Area Offices in inventorying prime and unique farmlands (see 7 CFR 600.2(c)(1), 600.4, 600.7). This includes reviewing statewide lists of soil mapping units that meet the criteria for prime farmlands and resolving coordination

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problems that may occur among States for specific soil series or soil mapping units.

(c) *National Office.* The Deputy Chief for Soil Survey and Resource Assessment (see 7 CFR 600.2(b)(3)) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

[43 FR 4031, Jan. 31, 1978, as amended at 65 FR 57538, Sept. 25, 2000]

§ 657.5 Identification of important farmlands.

(a) *Prime farmlands—(1) General.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) *Specific criteria.* Prime farmlands meet all the following criteria: Terms used in this section are defined in USDA publications: “Soil Taxonomy, Agriculture Handbook 436”; “Soil Survey Manual, Agriculture Handbook 18”; “Rainfall-erosion Losses From Cropland, Agriculture Handbook 282”; “Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346”; and

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“Saline and Alkali Soils, Agriculture Handbook 60.”

(i) The soils have:

(A) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(B) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(C) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32 °F (0 °C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 °F (8 °C); in soils that have no O horizon, the mean summer temperature is higher than 59 °F (15 °C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches

deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); and,

(vii) The product of K (erodibility factor) \times percent slope is less than 2.0, and the product of I (soils erodibility) \times C (climatic factor) does not exceed 60; and

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59 °F (15 °C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59 °F (15 °C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

(b) *Unique farmland*—(1) *General*. Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific characteristics of unique farmland*. (i) Is used for a specific high-value food or fiber crop; (ii) Has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed-irrigation system; (iii) Combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such a nearness to market, that favor the growth of a specific food or fiber crop.

(c) *Additional farmland of statewide importance*. This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and de-

lineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

(d) *Additional farmland of local importance*. In some local areas there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

PART 658—FARMLAND PROTECTION POLICY ACT

Sec.

- 658.1 Purpose.
- 658.2 Definitions.
- 658.3 Applicability and exemptions.
- 658.4 Guidelines for use of criteria.
- 658.5 Criteria.
- 658.6 Technical assistance.
- 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

AUTHORITY: 7 U.S.C. 4201-4209.

SOURCE: 49 FR 27724, July 5, 1984, unless otherwise noted.

§ 658.1 Purpose.

This part sets out the criteria developed by the Secretary of Agriculture, in cooperation with other Federal agencies, pursuant to section 1541(a) of the Farmland Protection Policy Act (FPPA or the Act) 7 U.S.C. 4202(a). As required by section 1541(b) of the Act, 7 U.S.C. 4202(b), Federal agencies are (a) to use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland, (b) to consider alternative

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actions, as appropriate, that could lessen adverse effects, and (c) to ensure that their programs, to the extent practicable, are compatible with State and units of local government and private programs and policies to protect farmland. Guidelines to assist agencies in using the criteria are included in this part. The Department of Agriculture (hereinafter USDA) may make available to States, units of local government, individuals, organizations, and other units of the Federal Government, information useful in restoring, maintaining, and improving the quantity and quality of farmland.

§ 658.2 Definitions.

(a) *Farmland* means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or local importance. "Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

(b) *Federal agency* means a department, agency, independent commission, or other unit of the Federal Government.

(c) *Federal program* means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term "Federal program" does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

(2) For the purposes of this section, a project is considered to be "beyond the planning stage and in either the active design or construction state on August 4, 1984" if, on or before that date, actual construction of the project had commenced or:

(i) Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) The engineering or architectural design had begun or such services had been secured by contract. The phrase "undertaking, financing, or assisting construction or improvement projects" includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase "acquiring, managing, or disposing of Federal lands and facilities" refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as

acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

(d) *State or local government policies or programs to protect farmland* include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

(e) *Private programs to protect farmland* means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

(f) *Site* means the location(s) that would be converted by the proposed action(s).

(g) *Unit of local government* means the government of a county, municipality, town, township, village, or other unit of general government below the State level, or a combination of units of local government acting through an areawide agency under a State law or an agreement for the formulation of regional development policies and plans.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

§ 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the

Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Natural Resources Conservation Service (NRCS) field office serving the area will provide the assistance. Many State or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a Federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-Federal unit of government applies for Federal assistance to convert farmland to a nonagricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the Federal agency, on the basis of the analysis set forth in § 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a Federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act

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shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 of the Act, 7 U.S.C. 4202, and regulations issued pursuant to that section.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

§ 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each Federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such Federal programs, to the extent practicable, are compatible with State, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency may determine whether or not a site is farmland as defined in § 658.2(a) or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD-1006, the Farmland Conversion Impact Rating Form, available at NRCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and NRCS will so notify the agency. If the site is determined by NRCS to be subject to the Act, then NRCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in § 658.5(a). NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land

evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by NRCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to Federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from NRCS the score of a site's relative value as described in § 658.4(a) and then applies the site assessment criteria which are set forth in § 658.5 (b) and (c), the agency will assign to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.

(3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores

totaling 160 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in § 658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rule-making in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in § 658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction state on the effective date of the Act. Section 1547(b) exempts acquisition or use of farmland for national defense purposes. There are no other exemptions of projects by category in the Act.

(f) Numerous States and units of local government are developing and adopting Land Evaluation and Site Assessment (LESA) systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use. Therefore, States and units of local government may have already performed an evaluation using criteria similar to those con-

tained in this rule applicable to Federal agencies. USDA recommends that where sites are to be evaluated within a jurisdiction having a State or local LESA system that has been approved by the governing body of such jurisdiction and has been placed on the NRCS State conservationist's list as one which meets the purpose of the FPPA in balance with other public policy objectives, Federal agencies use that system to make the evaluation.

(g) To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after the agency has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, the agency is requested to return a copy of the Form AD-1006, which indicates the final decision of the agency, to the NRCS field office.

(h) Once a Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's, or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional redundant FPPA analysis.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

§ 658.5 Criteria.

This section states the criteria required by section 1541(a) of the Act, 7 U.S.C. 4202(a). The criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (1) the land evaluation criterion, relative value, for which NRCS will provide the rating or score, and (2) the site assessment criteria, for which each Federal agency must develop its own ratings or scores. The criteria are as follows:

(a) *Land Evaluation Criterion—Relative Value.* The land evaluation criterion is based on information from several sources including national cooperative soil surveys or other acceptable soil surveys, NRCS field office technical guides, soil potential ratings or soil productivity ratings, land capability classifications, and important farmland determinations. Based on this information, groups of soils within a local government's jurisdiction will be

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evaluated and assigned a score between 0 to 100, representing the relative value, for agricultural production, of the farmland to be converted by the project compared to other farmland in the same local government jurisdiction. This score will be the Relative Value Rating on Form AD 1006.

(b) *Site Assessment Criteria.* Federal agencies are to use the following criteria to assess the suitability of each proposed site or design alternative for protection as farmland along with the score from the land evaluation criterion described in § 658.5(a). Each criterion will be given a score on a scale of 0 to the maximum points shown. Conditions suggesting top, intermediate and bottom scores are indicated for each criterion. The agency would make scoring decisions in the context of each proposed site or alternative action by examining the site, the surrounding area, and the programs and policies of the State or local unit of government in which the site is located. Where one given location has more than one design alternative, each design should be considered as an alternative site. The site assessment criteria are:

(1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?

More than 90 percent—15 points
90 to 20 percent—14 to 1 point(s)
Less than 20 percent—0 points

(2) How much of the perimeter of the site borders on land in nonurban use?

More than 90 percent—10 points
90 to 20 percent—9 to 1 point(s)
Less than 20 percent—0 points

(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than 5 of the last 10 years?

More than 90 percent—20 points
90 to 20 percent—19 to 1 point(s)
Less than 20 percent—0 points

(4) Is the site subject to State or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?

Site is protected—20 points
Site is not protected—0 points

(5) How close is the site to an urban built-up area?

The site is 2 miles or more from an urban built-up area—15 points

The site is more than 1 mile but less than 2 miles from an urban built-up area—10 points

The site is less than 1 mile from, but is not adjacent to an urban built-up area—5 points

The site is adjacent to an urban built-up area—0 points

(6) How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote non-agricultural use?

None of the services exist nearer than 3 miles from the site—15 points

Some of the services exist more than 1 but less than 3 miles from the site—10 points

All of the services exist within ½ mile of the site—0 points

(7) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county? (Average farm sizes in each county are available from the NRCS field offices in each State. Data are from the latest available Census of Agriculture, Acreage of Farm Units in Operation with \$1,000 or more in sales.)

As large or larger—10 points

Below average—deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average—9 to 0 points

(8) If this site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?

Acreage equal to more than 25 percent of acres directly converted by the project—10 points

Acreage equal to between 25 and 5 percent of the acres directly converted by the project—9 to 1 point(s)

Acreage equal to less than 5 percent of the acres directly converted by the project—0 points

(9) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

All required services are available—5 points

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Some required services are available—4 to 1 point(s)

No required services are available—0 points

(10) Does the site have substantial and well-maintained on-farm investments such as barns, other storage buildings, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?

High amount of on-farm investment—20 points

Moderate amount of on-farm investment—19 to 1 point(s)

No on-farm investment—0 points

(11) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

Substantial reduction in demand for support services if the site is converted—10 points

Some reduction in demand for support services if the site is converted—9 to 1 point(s)

No significant reduction in demand for support services if the site is converted—0 points

(12) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?

Proposed project is incompatible with existing agricultural use of surrounding farmland—10 points

Proposed project is tolerable to existing agricultural use of surrounding farmland—9 to 1 point(s)

Proposed project is fully compatible with existing agricultural use of surrounding farmland—0 points

(c) *Corridor-type Site Assessment Criteria.* The following criteria are to be used for projects that have a linear or corridor-type site configuration connecting two distant points, and crossing several different tracts of land. These include utility lines, highways, railroads, stream improvements, and flood control systems. Federal agencies are to assess the suitability of each corridor-type site or design alternative for protection as farmland along with the land evaluation information described in §658.4(a). All criteria for corridor-type sites will be scored as shown

in §658.5(b) for other sites, except as noted below:

(1) Criteria 5 and 6 will not be considered.

(2) Criterion 8 will be scored on a scale of 0 to 25 points, and criterion 11 will be scored on a scale of 0 to 25 points.

§ 658.6 Technical assistance.

(a) Section 1543 of the Act, 7 U.S.C. 4204 states, "The Secretary is encouraged to provide technical assistance to any State or unit of local government, or any nonprofit organization, as determined by the Secretary, that desires to develop programs or policies to limit the conversion of productive farmland to nonagricultural uses." In §2.62, of 7 CFR part 2, subtitle A, NRCS is delegated leadership responsibility within USDA for the activities treated in this part.

(b) In providing assistance to States, local units of government, and nonprofit organizations, USDA will make available maps and other soils information from the national cooperative soil survey through NRCS field offices.

(c) Additional assistance, within available resources, may be obtained from local offices of other USDA agencies. The Agricultural Stabilization and Conservation Service and the Forest Service can provide aerial photographs, crop history data, and related information. A reasonable fee may be charged. In many States, the Cooperative Extension Service can provide help in understanding and identifying farmland protection issues and problems, resolving conflicts, developing alternatives, deciding on appropriate actions, and implementing those decisions.

(d) Officials of State agencies, local units of government, nonprofit organizations, or regional, area, State-level, or field offices of Federal agencies may obtain assistance by contacting the office of the NRCS State conservationist. A list of Natural Resources Conservation Service State office locations appears in appendix A, §661.6 of this title. If further assistance is needed, requests

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should be made to the Assistant Secretary for Natural Resources and Environment, Office of the Secretary, Department of Agriculture, Washington, DC 20250.

§ 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

(a) Section 1542(a) of the Act, 7 U.S.C. 4203, states, "Each department, agency, independent commission or other unit of the Federal Government, with the assistance of the Department of Agriculture, shall review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provision thereof will prevent such unit of the Federal Government from taking appropriate action to comply fully with the provisions of this subtitle."

(b) Section 1542(b) of the Act, 7 U.S.C. 4203, requires, as appropriate, each department, agency, independent commission, or other unit of the Federal Government, with the assistance of the Department of Agriculture, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of the Act.

(c) USDA will provide certain assistance to other Federal agencies for the

purposes specified in section 1542 of the Act, 7 U.S.C. 4203. If a Federal agency identifies or suggests changes in laws, administrative rules and regulations, policies, or procedures that may affect the agency's compliance with the Act, USDA can advise the agency of the probable effects of the changes on the protection of farmland. To request this assistance, officials of Federal agencies should correspond with the Chief, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

(d) To meet the reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, each Federal agency is requested to report to the Chief of the Natural Resources Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b). Until an agency fully implements those sections, the agency should continue to make the annual report, but may omit the report upon full implementation. However, an agency is requested to file an annual report for any future year in which the agency has substantially changed its process for compliance with the Act.

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