§ 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

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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.
§ 650.25  7 CFR Ch. VI (1-1-14 Edition)

(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 effect or incompatible development in the base flood plain. 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
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 floodPLAIN 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]
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PART 651 [RESERVED]

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

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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 Marianna 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.